1955

IN THE COURT OF THE TRANSPORT TRIBUNAL

TRANSPORT ACTS, 1947 AND 1953

IN THE MATTER OF THE APPLICATION OF THE BRITISH TRANSPORT COMMISSION (1955 No. 2)

TO CONFIRM THE BRITISH TRANSPORT COMMISSION (RAILWAY MERCHANDISE) CHARGES SCHEME

TUESDAY, 12TH JULY, 1955

FIRST DAY

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PROCEEDINGS OF THE TRANSPORT TRIBUNAL

TUESDAY, 12th JULY, 1955

PRESENT :

HUBERT HULL, Esq., C.B.E. (*President*)

A. E. SEWELL, Esq.

J. C. POOLE, Esq., C.B.E., M.C.

Mr. HAROLD I. WILLIS, Q.C., Mr. MAURICE LYELL, Q.C., Mr. E. S. FAY, Mr. F. A. STOCKDALE and Mr. G. C. EMSLIE (instructed by Mr. M. H. B. Gilmour, Chief Legal Adviser to the British Transport Commission) appeared on behalf of the British Transport Commission.

Mr. WALTER A. L. RAEBURN, Q.C., Mr. ERIC H. BLAIN and Mr. MICHAEL MANN (instructed by Messrs. Vizard, Oldham, Crowder & Cash) appeared on behalf of the Traders' Co-ordinating Committee on Transport.

Mr. MICHAEL ROWE, Q.C., and Mr. J. C. LEONARD (instructed by Mr. Donald H. Haslam, Solicitor and Legal Adviser to the National Coal Board) appeared for the National Coal Board.

Mr. H. ROYSTON ASKEW, Q.C., and Mr. R. W. BELL (instructed by Messrs. Sherwood & Co.) appeared on behalf of The Gas Council.

Mr. B. J. McKENNA, Q.C., and Mr. J. RAMSAY WILLIS (instructed by Messrs. Allen & Overy) appeared on behalf of the British Iron and Steel Federation.

Mr. ERIC BLAIN (instructed by Messrs. Godden, Holme & Co.) appeared on behalf of the Brewers' Society.

Mr. J. RAMSAY WILLIS (instructed by Messrs. Allen & Overy) appeared on behalf of the Joint Iron Council.

Mr. S. B. R. COOKE (instructed by Mr. R. A. Finn, Solicitor to the Central Electricity Authority) appeared on behalf of the Central Electricity Authority.

Mr. G. R. ROUGIER (instructed by Messrs. Neve, Beck & Co.) appeared on behalf of the Agricultural Engineers' Association.

Mr. T. R. CRAWFORD (instructed by Messrs. Hedley and Thompson) appeared on behalf of the National Galvanisers Limited.

Mr. L. J. H. HORNER, appeared on behalf of the Chamber of Shipping of the United Kingdom.

Mr. CLIFFORD H. ASHBURN, appeared on behalf of the Hull Incorporated Chamber of Commerce and Shipping.

Mr. D. K. GREEN, appeared on behalf of the Cable Makers' Association.

Mr. H. A. HUDSON, appeared on behalf of the National Association of Sack Merchants and Reclaimers Ltd.

Mr. H. S. VIAN-SMITH, M.C., J.P., and Mr. P. B. ALLNATT, LL.B., represented the Association of British Chambers of Commerce.

Mr. E. BEBBINGTON represented the National Farmers' Union.

Mr. W. J. PHILLIPSON, represented the National Federation of Scrap Iron, Steel and Metal Merchants.

Mr. C. NOWELL LIDGUARD, represented The Globe Tank & Foundry (Wolverhampton) Ltd.

Mr. C. NOWELL LIDGUARD, represented the Galvanized Tank Manufacturers' Association.

Mr. C. NOWELL LIDGUARD, represented the Dustbin Manufacturers' Association.

Mr. R. E. McGUIRE, represented the Cement Makers' Federation.

(*President*): We have put on the memorandum which you have all had that the first matter we wish to be dealt with is any objection which is intended to be construed as contending that the Scheme as submitted is *ultra vires*. I hope there has been some agreement among those of you who have objected as to who is going to submit the points of that nature which have been taken. Who is going to speak first?

(*Mr. Harold Willis*): I do not know whether I might just mention one point, Sir; I notice that one Objector who raises a point of Law is an Objector whose *locus* may be in question.

(*President*): Who is that? We extended the time for objections, so that the last of them only came in yesterday.

(*Mr. Harold Willis*): It is Objection No. 11, by the Globe Tank & Foundry (Wolverhampton) Limited.

(*President*): Is there anyone here representing that Objector?

(*Mr. C. N. Lidguard*): I am, Sir. I am prepared to withdraw it.

(*President*): You mean, you withdraw that particular objection?

(*Mr. C. N. Lidguard*): Yes, Sir.

(*President*): Very well; that will defer any question as to *locus*?

(*Mr. H. J. Willis*): Yes, Sir.

(*President*): Now, amongst the other Objectors, who has raised, or desires to be understood as having, raised the *vires* point?

(*Mr. McKenna*): I appear with by learned friend, Mr. Willis, for the British Iron and Steel Federation. In our objection we have taken two points; if they are good points they do go to the validity of certain parts of the Scheme. I have not myself seen any of the other objections except the objection of the Traders' Co-ordinating Committee on Transport. That Objection does, in effect, take the same two points as we have taken at the beginning of our notice of objection. I do not know if there are other objectors who have taken other objections on the *ultra vires* point, which are wider in scope than the two we have taken; certainly we have no understanding with any other Objector about our going before them and taking our points first.

(*President*): In the case of a large number of Objections there are paragraphs which are capable of being read as raising the *vires* point, although they do not explicitly use the phrase. I should have thought that if you were prepared to go on, Mr. McKenna, it would be wise to hear you on the point and then other people will make up their minds as to whether you have covered their submissions or whether they want to add anything to them.

I do not understand all these microphone arrangements; I hope if there is any difficulty in hearing me, or if I have any difficulty in hearing you, somebody will indicate it.

(*Mr. McKenna*): If you please, Sir; I am keeping as far away from mine as I can!

(*President*): I gather that everyone has heard everything they have wanted to hear so far.

(*Mr. McKenna*): To make our objection clear, I start with paragraph 5 of the Draft Scheme. Paragraph 5 provides that "The maximum carriage charges"—that is to say the charges which have been fixed in the first Schedule —"cover conveyance and the following accommodation and services: (i) the provision of:—(*a*) wagons (when provided by the Commission) save when the carriage entails the use of a special wagon in respect of the provision of which the Commission are entitled to make a reasonable charge under paragraph 10 of this Scheme; (*b*) sheets, when and to the extent normally required for the protection of goods in transit; (ii) in the case of goods carried to or from a terminal station:—(*a*) the use of accommodation (other than coal drops) normally and customarily provided and the services normally and customarily rendered by the Commission for or in dealing with goods generally as railway carriers thereof before or after railway conveyance; (*b*) assistance in loading and unloading in so far as it is normally and customarily afforded, including the use of plant and machinery normally available at the station at which the goods are loaded or unloaded, and the covering and uncovering of goods when and to the extent normally required for their protection in transit; (iii) in the case of goods carried to or from a private siding the delivery or receiving (as the case may be) of loaded wagons at the junction with the private siding; but the maximum carriage charges shall apply notwithstanding that all or any of the accommodation or services hereinbefore referred to are not used or afforded."

That paragraph makes provision for the two different kinds of traffic; it makes provision for what I may call the terminal station traffic and the private siding traffic and it provides, in effect, that the same maximum charge shall apply to both kinds of traffic.

May I take first the terminal station traffic and point out what services it is that the maximum carriage charge under this paragraph is to cover? It covers five types of service; item No. 1 is conveyance; item No. 2 is the provision of wagons; item No. 3 is the provision of sheets; item No. 4 is the use of station accommodation and the services normally rendered by the Commission as railway carriers before or after conveyance—that is the station terminal, and that covers, of course, not only the provision of the station and the station sidings but supervision and clerkage and shunting and matters of that kind. That is item No. 4.

Item No. 5 is assistance in loading and unloading and in covering and uncovering goods; in other words, the service terminals. Included somewhere in those five heads is the work of delivering and receiving loaded wagons at the junction between the main line and the station sidings; that is to say the work of taking up or throwing off trucks, the work of hauling or shunting the trucks over the point of the junction so as to keep the main line from obstruction. I say that is included somewhere; it is either in item No. 1 which is conveyance, or in item No. 4 which describes the station terminal.

As I have pointed out, Sir, paragraph 5 provides that there shall be the same maximum charge in the case of goods carried to or from a private siding; that is to say the same maximum charge as in the case of goods carried to or from a terminal station. In the case of goods carried to or from a private siding the maximum charge covers three of the five items covered by the maximum charge in the case of terminal station traffic. It covers conveyance; that is item 1. It covers the provision of wagons, item No. 2; it covers the provision of sheets where they are required, which is item No. 3. The paragraph lists as a separate item the delivery or receiving of loaded wagons at the junction with the private siding, and I shall be dealing with that matter presently. It lists that as a separate matter although, as I have pointed out, in the case of the terminal station traffic the equivalent service, the taking off or throwing off of the wagon and moving it clear of the line, is not separately listed either in item 1, as I think it is, or in item 4; it is somewhere or other in those two items.

Paragraph 5 makes no provision for the services of supervision or clerkage, loading or unloading, covering or uncovering in the case of goods carried to or from a private siding. If such services are rendered by the Commission they are to be the subject of a separate charge under paragraph 10 of the Scheme read with paragraph 11 of the second Schedule.

Perhaps I can turn now to paragraph 10 of the Scheme on page 2: "The Commission may make such charges as may be reasonable for the use of any of the services and facilities specified in the Second Schedule to this Scheme" and then there is the provision that any question as to the reasonableness of the charges made by the Commission under this paragraph shall be determined by the Transport Tribunal.

If one turns to the Second Schedule, paragraph 11 provides: "Any of the following services or facilities when rendered to or provided for a trader at his request or for his convenience; provided that, where before any such service or facility is rendered or provided, a trader has given notice in writing to the Commission that he does not require it, the service or facility shall not be deemed to be rendered or provided at the trader's request or for his convenience:—(i) Services rendered or accommodation provided by the Commission at or in connection with a private siding other than the delivery or receiving of loaded wagons at the junction with any private siding".

The effect is this, that if none of the services is rendered —I mean the services analogous to the station terminal or the station terminal service—then the maximum carriage charge is to be the same maximum carriage charge for the private siding as for the terminal station goods; but if any of the services which are analogous to the station terminal or the service terminals are performed by the Commission, in the case of the private siding traffic the rendering of those services is not covered by the maximum charge, but is to be the subject of an additional charge which is to be reasonable in amount.

So far I have considered what appears to be the strongest case in my favour on the provisions of paragraph 5; that is to say the strongest case of inequity between one class of traffic and another. I noticed, Sir, that you looked a little surprised when I used the word "inequity"; it slipped out, but it is not essential to my argument.

(*President*): It is irrelevant, is it not?

(*Mr. McKenna*): Another case is not on inequity but on a distinction which exists in the scope of the services provided for one trader and another and covered by the same maximum charge; that is the case where the Transport Commission do not provide the full terminal services at a particular station. In that case, the trader for whom the maximum charge is to be the same as it is for all other traders gets fewer services rendered to him by the Commission than a trader who is trading from some other station where the services are provided more abundantly.

(*President*): That is "merit", is it not?

(*Mr. McKenna*): Whether it be merits or *vires* it will be for you to determine; but at the moment all I am pointing out is to ask you to note in the private siding traffic the maximum charge covers a small range of services than the same maximum charge which is fixed in respect of the terminal station traffic. Now the question, as you say, is whether these provisions are *ultra vires* or whether they go to merits.

The answer to that question will depend in the last resort on the provisions of section 20, subsection (2), of the 1953 Act, so might we look at that section first: "Every charges scheme shall, as respects the services and facilities to which it relates, comply with the following requirements, that is to say", and then (*b*) "It shall fix maximum charges except in cases where it appears not to be reasonably practicable or to be undesirable so to do; (*c*) in cases in which no maximum charge is fixed it shall authorise the Commission to make such charges as may be reasonable and provide for any questions as to the reasonableness of any such charge being determined on the application either of the Commission or of the person liable to the charge by the Transport Tribunal, to the exclusion of any other court".

There are two possible grounds upon which it can be contended, in our submission, that these provisions of the Scheme are *ultra vires* and if either ground is right, the argument succeeds. The first is: If the 1953 Act on its true construction requires that there shall be separate maximum charges for conveyance at service terminals, then these provisions of paragraph 5 of the Scheme are *ultra vires*, because they combine one maximum charge for the three services in the case of the terminal station traffic. That is the first possible ground in competence or *ultra vires*. The second is: If the 1953 Act requires——

(*President*): But, putting that matter generally, that contention is that for each distinct service, whatever the service may be, there must be a separate provision in the Scheme. You have chosen three operations which you say are separate services, but your argument, stated in general terms, is that for every separate service there must be a separate provision in the Scheme?

(*Mr. McKenna*): I do not need to put my argument that high, Sir; I am only concerned with conveyance, station terminals and service terminals, and if my argument leads to the consequence that there must be a separate charge for each service outside those three services, that is the point; but I am only concerned that so far as these three matters are concerned there must be a separate charge for each service and not a combined charge for the three. As I say, that is the first head of my argument.

The second head is that if the 1953 Act requires that the Scheme shall fix the same maximum charge for the same service, then again these provisions of paragraph 5 are *ultra vires*.

May I develop that a little? The effect of paragraph 5 is to fix for the private sidings traffic a higher maximum charge for conveyance than the Scheme fixes for the terminal station traffic. The maximum charge for the terminal station traffic, as you have seen, covers conveyance, plus a number of other services not covered by the maximum charge in the case of the private sidings traffic.

If I might put it more simply, Sir, if £1 is the maximum charge to Trader A for conveying goods and performing other services, and if £1 is the maximum charge to Trader B for conveying goods without performing those other services, then the maximum charge to Trader B for conveyance is in effect higher than the maximum charge to Trader A. Trader A is charged something less than £1 for conveyance, because he gets for his £1 not only conveyance, but other services as well; Trade B is charged the full £1.

That puts the point more simply, Sir, and its validity as a point against *ultra vires* depends upon whether you construe section 20 as permitting the Commission to fix different maxima for the same service, or whether you construe it, as we shall ask you to do, as permitting only one maximum to be fixed for the same service irrespective of the person to whom it is rendered.

Those are my two points in outline, Sir; I am not going to take very long to develop them, but I should like, if I may, to begin by reminding you of the provisions which were made in the earlier Acts for dealing with the subject-matter of paragraph 5. I will not take very long to do that, but I think it may help you.

(*President*): How early, Mr. McKenna?

(*Mr. McKenna*): I shall be going back a good deal at the start, Sir; it is to the Act of 1863, the Act which was considered by the Divisional Court in *Hall's* case. You will find that in the head-note——

(*President*): I do not think we have that yet.

(*Mr. McKenna*): It is reported in Vol. 15, Queen's Bench Division at page 505, Sir.

(*Mr. Harold Willis*): I have a spare copy of *Hall's* case if I may hand it to you, Sir. (*Volume handed.*)

(*Mr. McKenna*): The second paragraph of the head-note recites that: "By the London, Brighton, and South Coast Railway Act, 1863, section 51: 'The maximum rates of charges to be made by the company for the conveyance of animals and goods, including the tolls for the use of their railways and waggons or trucks and for locomotive power, and every other expense incidental to such conveyance (except a reasonable sum for loading, covering, and unloading the goods at any terminal station of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services or any of them are or is performed by the company), shall not exceed' certain sums prescribed:—Held, that station accommodation, the use of sidings, weighing, checking, clerkage, watching, and labelling, provided and performed by the company in respect of goods traffic carried by them as carriers, may be, and *prima facie* are 'services incidental to the duty or business of a carrier' within section 51; whether they are so in any particular case is a question of fact for the Railway Commissioners to decide, and, if found by them to be so, such services may be the subject of a separate reasonable charge in addition to the rates prescribed".

That is how the matter was dealt with in the earlier statutes; the stantute fixed a minimum rate of charge for conveyance; it provided that the Railway Company should be allowed to charge a reasonable sum for other matters in addition to the conveyance charge, and the other matters are the rates for sidings, weighing, checking, clerkage, and so on. I do not want to trouble you any more with *Hall's* case than that, Sir; I only referred to it because it is the easiest way of finding out what the earlier statutes in this field were.

Now if you have Browne and Theobald's Law of Railways, you will find the next statutory provisions at page 942 of the fourth edition. Those are the provisions of the (Rates and Charges) Order Confirmation Act, of 1891, in the case of the London and North Yestern Railway Company, and, as you know, Sir, the other Railway Companies were governed by similar charges set out in their Rates and Charges Confirmation Acts.

On page 942 of Browne and Theobald, you find the Schedule of Maximum Rates and Charges applicable to the London and North Western Railway Company; under the provisions of that Act, paragraph 1 merely describes the different classification of charges. Paragraph 2 reads: "The maximum rate for conveyance is the maximum rate which the Company may charge for the conveyance of (*a*) of merchandise by merchandise train; and, subject to the exceptions and provisions specified in this schedule, includes the provision of locomotive power and trucks by the Company and every other expense incidental to such conveyance not hereinafter provided for"—in other words, it fixed a maximum rate for conveyance.

I do not need to read any more of paragraph 2; paragraph 3, at the bottom of page 945, provides that: "The maximum station terminal is the maximum charge which the Company may make to a trader for the use of the accommodation (exclusive of coal drops) provided, and for the duties (*a*) undertaken by the Company for which no other provision is made in this schedule, at the terminal station (*b*) for or in dealing with merchandise, as carriers (*c*) thereof, before or after conveyance"—so a separate maximum charge is fixed for that.

Paragraph 4 deals with the maximum service terminals, saying that they are "the maximum charges which the Company may make to a trader for the following services when rendered to or for a trader, that is to say, loading, unloading, covering, and uncovering merchandise"—I do not think I need read any more on that.

Paragraph 5 provides that: "The Company may charge for the services hereunder mentioned, or any of them, when rendered to a trader at his request or for his convenience, a reasonable sum, by way of addition to the tonnage rate. Any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party. Provided that where before any service is rendered to a trader he has given notice in writing to the Company that he does not require it, the service shall not be deemed to have been rendered at the trader's request or for his convenience:—(i) Services rendered by the Company at or in connexion with sidings not belonging to the Company". That is all I wanted to refer you to in the 1891 Acts.

While you have Browne and Theobald before you, would you turn to page 1014, which gives you the provisions of section 4 of the Railway and Canal Traffic Act, 1894. That section provides as follows: "Whenever merchandise is received or delivered by a railway company at any siding or branch railway not belonging to the company, and a dispute arises between the railway company and the consignor or consignee of such merchandise as to any allowance or rebate to be made from the rates charged to such consignor or consignee in respect that the railway company does not provide station accommodation or perform terminal services, the Railway and Canal Commissioners shall have jurisdiction to hear and determine such dispute, and to determine what, if any, is a reasonable and just allowance or rebate". Those are the provisions of the old Acts, Sir.

May I turn next to the Railways Act of 1921; Section 30 of that Act deals with the subject of standard charges, and provides that the charges shall be in the form mentioned in the Fourth Schedule of the Act. I have no

doubt that you are very familiar with the form which provides for the disintegration of the charges into conveyance, service terminals and station terminals.

(*President*): I am not very familiar with them, although I have looked at them and I have ordered the disintegration of rates. I cannot be said to be familiar with them.

(*Mr. McKenna*): But no doubt you will remember that when you ordered them to be divided into the three separate charges, conveyance, station terminals and service terminals, that is the form of the classification in the First Schedule. Section 40 is probably the section under which you exercised your disintegrating jurisdiction; that section provides as follows: "Where application is made to the rates tribunal to fix or sanction any exceptional rate for the carriage of merchandise between two stations, or between a station and a siding, or between two sidings, or between either a station or a siding and a junction, the rates tribunal in fixing or sanctioning the exceptional rate shall determine the amounts (if any) to be included in the rate for the following services", and then they set out: conveyance, station terminals, service terminals, and accommodation provided and services rendered at or in connection with a private siding.

For completeness, perhaps it would be as well if you were to look at paragraph 11 of the Fifth Schedule to that Act; you will find that the Act deals with the services rendered at a private siding in the same way as the earlier statutes deal with them. It provides that: "A company may charge for the services hereunder mentioned, or any of them when rendered to a trader at his request or for his convenience a reasonable sum", and the first head is: "Services rendered by the company at or in connection with sidings not belonging to the company in respect of which no rate or charge is otherwise provided".

If one turns on to paragraph 12 one finds the same provisions in effect as one has found in the earlier Acts: "The standard rate for conveyance is the rate which the company may charge for the conveyance of merchandise by merchandise train", and so on. Then 13: "The standard station terminal is the charge which the company may make to a trader for the use of the accommodation (exclusive of coal drops) provided and for the duties undertaken by the Company, for which no provision is made in this Schedule at the terminal station for or in dealing with merchandise as carriers thereof before or after conveyance".

Paragraph 14 defines the standard service terminals as the charges for loading, unloading, covering and uncovering merchandise. Lastly, paragraph 19 makes it clear that the term "terminal station" does not include "a junction between the railway and a siding let by, or not belonging to, the company". I am sorry to have taken so much time in referring to these earlier statutes, Sir; the point of the reference is that I invite you to start your consideration of this matter by recognising that the earlier Acts provided a clear distinction between these three different kinds of service, the service of conveyance, the service of a station terminal and the service of the terminal services. The question now is on my first argument: What is meant by the provision of section 20, sub-section (2), that every Charges Scheme shall, as respects the services and facilities to which it relates fix maximum charges except in cases where it is not reasonable or practicable so to do?

(*President*): Ought we not to go back to section 77 of the 1947 Act, Mr. McKenna?

(*Mr. McKenna*): Certainly, Sir; I will read it. Section 77, sub-section (1) reads as follows: "A charges scheme may, as respects any of the services and facilities to which it relates, adopt such system for the determination of the charges, or, as the case may be, the charges and other terms and conditions, which are to be applicable as may appear desirable, and in particular and without prejudice to the generality of the foregoing words, any such scheme may, as respects any of the services and facilities to which it relates—(*a*) provide, with or without exceptions, for fixed charges, maximum charges, or standard charges, that is to say, charges which are to be adhered to save as otherwise provided by any provision of the scheme, and, in particular, by any provision of the scheme relating to the making of exceptional charges, special charges or agreed charges; (*b*) provide in any such case for minimum charges". I do not think that (*c*), (*d*), (*e*), (*f*) and (*g*) touch the point on which I am at the moment, but if you think I ought to read them, I will of course do so.

(*President*): Perhaps you had better read the short paragraph which follows (*g*); it ends up with words which might be of some use.

(*Mr. McKenna*): Yes, Sir—"and different provision may be made for different cases or classes of cases determined by or in accordance with the provisions of the scheme". That section has now to be read in the light of section 20 of the 1953 Act; perhaps I ought to have read sub-section (1) of Section 20 before I dealt with sub-section (2). That sub-section reads as follows: "The charges made by the Commission which are to be determined by or under charges schemes under Part V of the Transport Act, 1947, shall be the following and no other charges, that is to say—(*a*) charges for the carriage of merchandise or passengers by railway". Then (*f*) reads: "such other charges, if any, as, by reason of their connection with any of the charges aforesaid, ought properly to be dealt with by a charges scheme, and, without prejudice to the generality of the preceding provisions of this subsection, the duty imposed by section seventy-six of that Act on the Commission to prepare and submit drafts of charges schemes shall be limited accordingly".

I invite you to read Section 20 of the 1953 Act as providing that every charges scheme now shall fix maximum charges in respect of the services and facilities to which it relates except when it is not reasonably practicable, or is undesirable, so to do; and that is in effect, subject to the other matters set out in subsection (2), the law as to what a charges scheme shall contain.

(*President*): That cannot quite be so in these particular terms; subsection (2) ends, after specifying the heads with which a scheme must comply: "shall be limited accordingly". You have to read section 20, subsection (2), with section 77, and to the extent to which section 20, subsection (2) of the 1953 Act is inconsistent with section 77, subsection (1) of the 1947 Act, the later provisions rule. Is that not right, Mr. McKenna?

(*Mr. McKenna*): Yes, Sir, I think it must be right. It might be a nice point if it were relevant to consider how much of section 77 was operative in relation to section 20, subsection (2).

(*President*): I should think it was reasonably plain that so far as terms and conditions go, section 77 was plainly still operative.

(*Mr. McKenna*): Yes, but I had charges in mind, perhaps more than terms and conditions. No doubt section 77 is fully effective for terms and conditions, but as to charges, the provision now is not that the scheme may make such provisions as it likes for the making of charges, but that it shall either fix maximum charges, or, where it is not reasonably practicable so to do, it shall authorise the Commission to charge reasonable charges. In that sense it seems that there is not much left of Section 77 to deal with a charges scheme, so far as it relates to charges.

(*President*): Ought not one also to read in section 20, subsection (6)?

(*Mr. McKenna*): If you please, Sir. "The reference in this section to charges for the carriage of merchandise by railway does not include a reference to collection and delivery charges, but nothing in this subsection shall prevent collection and delivery charges being dealt with under paragraph (*f*) of subsection (1) of this section". That of course makes it proper to include in that Charges Scheme provisions relating to the collection and delivery of goods, and that has to be covered by section 20, sub-section (1) (*f*).

There are two possible constructions of section 20, sub-section (2), in relation to my first argument, that is to say, the argument that the scheme should provide separate charges for each of the three services. The first possible argument is that the section permits the author of the Scheme to combine the three several services for the purpose of fixing one maximum charge for all of them. That, no doubt, is the construction for which the Commission contend. The alternative construction is that the section requires that the scheme shall fix separate maximum charges for the three separate services.

(*President*): And, of course, the second construction is the construction which you are putting forward?

(*Mr. McKenna*): Yes, Sir.

(*President*): When you say, "it shall provide separate charges", do you mean separate and different?

(*Mr. McKenna*): No, Sir, separate and maximum charges; that is to say, the Tribunal shall decide what is the reasonable maximum charge for conveyance as a separate matter, for station terminals as a separate matter, and for service terminals as a separate matter. If it happened by coincidence in any case that your charge was the same for Service 1 as it was for Service 2, that would be beside the point; but the alternative construction, if my submission is right, is that there must be a separate maximum charge fixed for each of the three services; each of the services is a service to which the Scheme relates. Section 20, subsection (2), provides that you shall fix maximum charges for the services to which the Scheme relates, and that in my submission means that you are to fix maximum charges for each of those services unless you decide that it is not reasonable or practicable so to do. Then you authorise the Commission to charge a reasonable charge, for which you do not fix a maximum charge.

As I say, Sir, it is a matter of construction of section 20, subsection (2), as to whether when it provides that you shall fix maximum charges for the services to which the Scheme relates, that permits the author of the Scheme to fix one maximum charge for these three several services combined.

So far as the purpose of the Act goes, in my submission there can be little doubt that the construction which we put on Section 20, subsection (2), serves that purpose, and the alternative construction does not. The purpose of the provision that the Scheme shall fix maximum charges is to protect traders from the exaction of unreasonably high charges for the services rendered to them by the Commission; in my submission that is the purpose of a requirement that the Scheme shall fix maximum charges. If it is permissible to combine the services to which this Scheme relates, and to fix one maximum charge for the combined services, you protect the trader to whom the combined services are in fact rendered; you do not protect the trader to whom only some of those services are rendered.

(*President*): You do not protect them as much.

(*Mr. McKenna*): The maximum charge which you have held to be reasonably charged for the combined services must, in my submission, be excessive for one of those services taken by itself. So in that sense you do not protect him as the Act intends him to be protected; he is still subject to the exaction of a charge which you would say was unreasonably high for the services which are rendered, and in my submission that must follow if it is permissible to fix one maximum charge for the three several services. I think the Commission's argument on the construction of section 20, subsection (2), must go so far as to contend that it is permissible to fix one maximum charge for all the services for which the Scheme relates, whether they are the three that paragraph 5 deals with, or any others. In other words, there is a choice between the construction which contends that it is permissible to fix one maximum charge for all the services combined, and the construction for which we contend, namely, that it is not permissible to do so, and that you must fix the separate maximum charges for the three matters with which I am concerned.

(*President*): That is why I asked you whether, as it seemed to me, your argument necessarily goes this length, namely, that one must identify every different collection of operations which one can identify with the name of the service, and that each of those separate, and I should have thought possibly very numerous, operations must be separately dealt with in the Scheme. You have chosen, so to speak, to fix your argument on the particular three operations which are specified in paragraph5, but your argument, if valid, must surely extend to the point of saying this and that and the other—A to Z, or 1 to 100, are really separate operations, and they must be separately dealt with in the Scheme?

(*Mr. McKenna*): Yes, Sir; may I make two comments on what you have said? If my argument does go that far, then clearly in deciding what is a separate service and what is not, one has to be reasonable and to judge the matter on sensible lines. You could, of course, take any one particular service and break it up into several parts, but if in the railway sense that particular service would be regarded as a single service, then nobody would contend that it was obligatory to disintegrate it into small parts and fix separate maximum charges for small parts.

(*President*): Not on merits, but we are talking about law. Are you saying, in an attempt to assist us, what are the necessary components or distinguishing marks of a service?

(*Mr. McKenna*): I did not want to try and do that, but even within the narrow field of law in which we are engaged at the moment, there is this much room for common sense, that when you are considering whether something is a service for which a maximum charge must be fixed, you will have regard to the history of the Acts, you will have regard to that which has been treated in the past as one service, and you will not, from this side of the table at all events, ask the Tribunal to say that that which has in the past always been regarded as a single service should be disintegrated still further, and separate maximum charges fixed for its parts. All I want to do is to safeguard myself against being thought to argue anything so unreasonable, because it would be inconceivable to break it down into small parts; otherwise the purpose of my looking into the earlier statutes, to show you that these three matters of conveyance, station terminals and service terminals had in the past always been treated each as a separate service for which a separate maximum charge was fixed——

(*President*): I should have thought it would be possible to say that the fact that legislation, continuously up to 1947, has distinguished these different operations and has provided for them differently—that up to 1947 that was the practice both in private and public legislation, but that in 1947 there was no reference whatever to it, was against you rather than for you.

(*Mr. McKenna*): Yes, Sir; on that point the 1947 Act, of course, gave the greatest freedom in determining the method of charging which should be incorporated in any scheme; I say that, but it may well be that the argument I am addressing to you now would not have succeeded if the matter rested upon the provisions of section 77 of the 1947 Act. I am only concerned—at least I think I am—on this point on Section 20, subsection (2), of the later Act, and when that Act provides that you shall fix maximum charges for the services to which the Scheme relates, the fact that the Act does not say that conveyance is one service, station terminals is another, and service terminals is a third, does not, in my submission, mean that if in truth they are, you are free under Section 20, subsection (2), to fix one maximum for the three combined.

(*President*): Then I must abandon the hope of your assisting us with the definition of a service, and equally the hope of having your assistance on the extent of the word "facility"?

(*Mr. McKenna*): I do not think it is essential to my argument that I should help you on either point, Sir.

(*President*): Then I shall have to appeal to those who follow you in your argument.

(*Mr. McKenna*): If you please, Sir. Once you are satisfied, if you are satisfied, that conveyance is a service, and that the other two matters are also services, then if you accept my argument that you must either fix a maximum charge for each service, or, if it is not reasonable to do so, authorise the Commission to make reasonable charges for that service, it is unnecessary for me to go on and argue what is or what is not a service in some other context.

I was going to make two comments; I will only make one so far on something which fell from you a moment ago when I was pointing out that if the Commission's construction of the section is right, it must be that it is permissible to have a single maximum charge fixed for all the services to which the Scheme relates, whether they are the three with which I am concerned or half-a-dozen more as well; that is the consequence of accepting the alternative argument.

I started the consideration of Section 20, subsection (2), by submitting to you that the purpose of the Act is served, and is only served, if you adopt the construction which we put before you, namely, that the maximum charges must be separate for the separate services, because if you do not do that and fix one maximum charge either for all the services combined, or even for the three of them combined together, then you are in

effect protecting the trader who wants the three combined services; you are not protecting the trader to whom only one of those services is rendered.

You did say a moment ago that the 1953 Act does not speak of conveyance, station terminals and service terminals separately, as the earlier Acts have done. That is quite true; if one looks at section 20, subsection (1), it provides that "the charges made by the Commission shall be charges for the carriage of merchandise or passengers by railway", and "(*f*) such other charges, if any, as, by reason of their connection with any of the charges aforesaid, ought properly to be dealt with by a charges scheme".

It is quite proper for my friend to argue that section 20, subsection (1), does not break up the word "carriage" into the three component parts of conveyance, station terminals and service terminals, but in my submission that does not assist the argument against me. The fact that you have one word used in section 20, subsection (1), and the fact that that subsection used the word "carriage" and that the word "carriage" is wide enough to embrace the three separate services, does not in my submission assist in answering the question as to whether one maximum charge can be fixed for the three services together.

At the moment section 20, subsection (1) (*a*), makes it certain that the Scheme can relate to those three services which are combined in the word "carriage". That construction of section 20, subsection (1) (*a*), does not help in deciding whether the Charges Scheme can properly fix one maximum charge for each of the three services which are combined in the word "carriage".

That is all I wanted to say to you, Sir, on the first of my two arguments. If I might just summarise my contentions on the point, I say that historically the three services have always been treated as separate services for which separate charges should be made. When in the 1953 Act it provided that the Scheme should fix maximum charges for the services and the facilities to which it relates, the intention was to fix maximum charges for each of those three services; that is my argument on section 20, subsection (2). I say that its construction is consistent with the language of section 20, subsection (2); but I say that the alternative construction would enable the purpose of the statute to be defeated.

Now I will come, if I may, to my second argument; that is that the Act requires that the same maximum charge shall be fixed for the same service. That, in my submission, is inherent in the notion of a maximum charge. A maximum charge is the highest charge which the Commission think it reasonable to fix for the performance of the service to what that charge relates. There cannot be two maxima for the same services, one high and the other low; that is a contradiction in terms. The Scheme cannot say at one and the same time that "X" is to be the maximum charge for the conveyance of goods for a distance of 10 miles that that "X" plus "Y" is to be the maximum charge for the conveyance of the same goods for the same distance. That is the submission I make on the requirement of section 20, subsection (2), that the Scheme shall fix maximum charges for the service to which it relates. It must fix one maximum for the same service; it cannot fix two maxima.

I have pointed out already in considering the position of paragraph 5, that it is very clear on the provisions of that paragraph, that the maximum carriage charge in the case of the terminal station covers many things which are not covered by the maximum carriage charge in the case of sidings traffic, and I submitted that if that be so, then it must follow that the maximum charge for conveyance, which is the common factor in both kinds of traffic, must be higher in the case of sidings traffic than it is in the case of terminal station traffic.

(*President*): We are at the moment more familiar with passenger charges schemes where, of course, the 1953 Act applies. Do you suggest that it is *ultra vires* to have a provision fixing 2d. a mile as the maximum irrespective of whether the train is a fast train or a stopping train?

(*Mr. McKenna*): I have never had to consider the point. If I might venture to express a hasty opinion, I should not contend that it was possible to differentiate because the services might be said to be different services in the two cases.

(*President*): The distance covered is the same.

(*Mr. McKenna*): If the speed is brought into it and, say, a maximum charge of 2d. is fixed for taking you over 10 miles in 10 minutes, it might quite well be that a maximum charge of half that amount would be appropriate for taking you over that distance in twice the time, and that the service would not be the same. It would be a service at a different speed.

(*President*): What about taking a comfortable and clean carriage, or taking an uncomfortable and dirty carriage?

(*Mr. McKenna*): I do not think there are any uncomfortable dirty carriages.

If I might come back to the point of my second argument, you have seen that the services for which the maximum charge is to be made in the case of terminal station traffic includes many things which are not required in the case of the private siding traffic, with the result that if any of those matters are in fact services which the railway company do perform for a private siding trader they would be entitled to charge him something else for doing it, and the consequence is, in my submission, that the charge made for conveyance to the private siding trader must be higher than the charge made for conveyance to the other trade, the terminal station trader. The only difference, as you noted, between them, apart from the fact that station terminals and service terminals are not to be performed for the siding trader and not covered by the maximum charge in his case, is that they say, in the case of the private siding trader, the maximum charge is to cover the delivery or the receipt of the loaded wagon at the junction between the private siding and the main line. That, no doubt, has been inserted for the purpose of contending that there is some service performed in that respect for the private siding trader which is not performed in the case of the trader at the terminal station.

My submission is this: the service of uncoupling the wagon when it has been delivered and moving it across the junction between the main line and the private siding has got its exact analogy in the case of traffic handled at the terminal station, where the truck has also got to be uncoupled from the train and pushed across the line of the railway siding. That is a matter which has been considered by the Railway and Canal Commissions in one or two cases, so perhaps I might give you the reference to the short passage in those cases.

(*President*): What is the matter they have considered, the fact that something analogous has to be done in the case of station traffic? It sounds physically obvious.

(*Mr. McKenna*): The question arose in this way: whether the railway company were entitled to make an extra charge against the private sidings trader in respect of the delivery of his traffic at his siding. The Court said, "No; that is a matter which is covered by conveyance; it is covered by conveyance in the case of the station traffic, it is also covered by conveyance in the case of the private siding traffic". I only refer to the case to show that the attempt to differentiate beween the two classes of traffic by making this matter, as it were, a separate subject for charge in the case of the sidings traffic is quite illusory, because the same service has to be performed in respect of the station traffic, although that is covered by paragraph 5, either by the word "conveyance" or by the words "station terminal".

(*President*): It is not the same service, but the same sort of service.

(*Mr. McKenna*): It may be performed under different conditions. Sometimes it may be it is less onerous for the railway company to handle traffic at the station than it would be at a private siding; sometimes it may be otherwise. In the old cases where it was more onerous by reason of the bad construction of the private siding, the railway company were entitled to make a separate charge in respect of that matter. But when you do, as the author of this scheme has done, fix the same maximum charge for all private siding traffic in respect only of the matter of conveyance, wagons and sheets, leaving to be separately charged the other matters which are covered by the maximum charge in the case of terminal traffic, that is to say, the station terminal, then you are manifestly charging him more for conveyance except in the exceptional case where his siding is so badly constructed that the extra cost of delivering to him at that siding is the equivalent of all the

station terminals and all the service terminals which are covered by the maximum charge in the other case.

My submission is just the same, even if I am told there may be one, two, three or more cases where the private siding is so awkwardly constructed that the trouble of delivery there is the equivalent of station terminals and service terminals for other traffic. My argument still remains that it is fixing that maximum charge, not merely for those traders whose private sidings are specially inconvenient, but fixing it for all private sidings so that they must all pay the same rate as the station traffic though they are not getting the benefit of station terminals or service terminals.

If I may, I would like to refer to two cases. One is the second of the *Pidcock* cases, in 10 Railway and Canal Traffic Cases, at Page 157, where Sir Frederick Peel, who delivered the principal judgment, is explaining what is covered by the charge for conveyance: The rate, therefore, is for conveyance by mechandise trade "——

(*President*): This is under the Order Confirmation Acts, is it not?

(*Mr. McKenna*): Yes. I say "Yes" because the date is 1896.

(*President*): Sir Frederick Peel begins his judgment by referring to the Manchester Shipping Company?

(*Mr. McKenna*): Yes. "The rate"—that is to say, the conveyance rate—"therefore, is for conveyance by merchandise train, and this will include any work which is incidental to such conveyance and for the performance of which it is reasonable to use the train engine, as for example, when at a junction with the main line of either a station siding or a private siding, the train has to pick up or throw off trucks, the work of hauling or shunting the trucks over the points at the junction and over so much of the siding as the keeping of the main line clear of obstruction may require. But conveyance other than this off the main line does not seem to come within section 2". That is the section dealing with the charge for conveyance. He is pointing out that in the case both of private siding traffic and station siding traffic there is the same operation of picking up, throwing off, hauling and shunting trucks over the points of the junction and over so much of the siding as will keep the main line clear of obstruction. I say it is quite illusory to provide, as a separate head of charge in Paragraph 5, for the expense of doing that work in the case of private sidings traffic. It has also got to be done in the case of the terminal station traffic, covered there, no doubt, by the word "conveyance" or by Item 4, which deals with station terminals.

That is all I wanted to say in support of my argument on the second head. My submission is that if either of those two arguments is sound, then Paragraph 5 in its present form cannot be approved. It is invalid either because it fixes one maximum charge for several combined services, or it is invalid because on analysis it is found to fix a higher maximum charge for conveyance in the case of private siding traffic than it fixes in the case of station terminal traffic.

(*President*): I do not quite understand, Mr. McKenna, at the moment how the first contention, standing by itself, is sufficient to show that the provision is *ultra vires*. Let us assume for the moment that there are only three kinds of services, which are the ones you have specified. Let us assume a scheme which deals with each of those services separately. Instead of having the one Paragraph 5, you split it up into paragraphs 5, 6 and 7. Suppose, having distinguished them in that way, giving separate treatment, you say the maximum rate is the same for each, would that, in your view, be *ultra vires*?

(*Mr. McKenna*): I am not quite following the way you put it: Paragraph 5 fixes the maximum charge for conveyance; Paragraph 6 fixes the maximum charge for the separate service of the station terminal; Paragraph 7 fixes the maximum charge for the separate service at the service terminals?

(*President*): I was not thinking of that. I was thinking of three traders enjoying three different kinds of services.

(*Mr. McKenna*): One, conveyance; the other, station terminal without conveyance?

(*President*): Yes.

(*Mr. McKenna*): If one can conceive a trader who enjoys a station terminal but does not have the service of conveyance in modern times, I follow that.

(*President*): Assuming you have three segregated, different services and they are segregated and dealt with in separate sections of the scheme. Would it in your view be *ultra vires* for the same maximum rate to be applied to each?

(*Mr. McKenna*): May I be quite sure I have understood: Fix a maximum rate of £1 for conveying goods for 10 miles; fix a maximum station terminal of £1 for the use of the station without conveyance, fix a maximum charge of £1 for service terminals?

(*President*): Yes.

(*Mr. McKenna*): No, Sir, with respect, and for this reason: that would be permissible. You, of course, would have to consider, in each case, what is the reasonable maximum to fix for those three matters. You would have to be satisfied that the £1 was the proper maximum for each.

(*President*): You mean when considering the merits of the Scheme?

(*Mr. McKenna*): Yes. If you did decide that £1 was the reasonable charge for each one of those so that the trader enjoying all three would pay £3 and the trader enjoying only one of them would pay only £1, there is nothing I could complain of there. You would have fixed a maximum charge for each of the services to which the Scheme related and would have used your own judgment in deciding what that maximum charge would be.

(*President*): On *vires* there would be no objection. You are relying on the commonsense of the Tribunal as to whether they confirm or alter.

(*Mr. McKenna*): Very much so when a question of charging the same amount for conveyance as for the station terminal is raised. But so far as *vires* goes, my argument goes no further than to say, on the first part, that when the Scheme says you must fix maximum charges for the services to which it relates, it means a maximum charge for each of those services.

(*President*): Each separate service must have a separate maximum charge?

(*Mr. McKenna*): I do not shrink from that, provided that nobody will say that it is implicit in my argument that there should be any breaking down of something which is normally and commercially regarded as a single service into two parts. I do not contend that.

(*President*): You contend that each operation or set of operations can be distinguished by the word "service," and for each separate service there must be a separate maximum charge?

(*Mr. McKenna*): I do not shrink from that at all, provided it is understood that in deciding what is a separate service the Tribunal and everybody else concerned with it must be sensible and not treat as two services something which in effect is one service.

(*President*): We are talking about *vires* at the moment.

(*Mr. McKenna*): We are talking about *vires* now in relation to the meaning of the word "service". When one is deciding is this a service for which, on my construction, a separate charge should be fixed, then one must be sensible about the thing and not treat something which is, in the common understanding of traders, a separate service as being two, three or four services. But with that limitation, I do not shrink from arguing that the scheme requires that a maximum charge should be fixed for each service to which it relates. As I say, those who contend to the contrary must contend that it is permissible to fix one maximum charge for all services combined. There is no doubt, in my submission, that a trader cannot be denied, in effect, your protection unless he happens to be a person who does in fact require that all the services should be rendered.

(*Mr. Raeburn*): May it please the Tribunal. I appear with my learned friend Mr. Eric Blain and Mr. Michael Mann on behalf of the Traders' Co-ordinating Committee on Transport, a body which comprises 102 constituents, 15 of whom are today separately represented.

We are instructed to support the arguments and adopt the arguments of my learned friend Mr. McKenna; but

I desire, by way of expanding what he has said, to put forward an alternative argument upon this first contention.

So far as sub-section (2) of Section 20 of the Transport Act, 1953, is concerned, the statute itself has made a distinction between "services" and "facilities"; they are separately referred to. Without detracting in any way from my learned friend's submissions with regard to a possible interpretation of the breakdown of services having regard to previous practise derived from earlier Statutes, and for one moment putting that aside and looking at it alternatively, our submission is that services and facilities, at any rate, are to be distinguished one from another in fixing maxima under sub-section (2) (*b*) as required by Parliament.

In looking at what are the distinctions between services and facilities, it might be convenient, by way of example, to look at Paragraph 5 of the Scheme again and to analyse the different constituents mentioned by my learned friend. I would only add that I should submit there are six and not five constituents; I am coming to those, if I may, in a moment.

Taking his Number 1, conveyance, that is in my submission clearly a service as opposed to a facility. Number 2, wagons, is a facility as opposed to a service. Number 3, sheets, again is a facility. Number 4, accommodation, a facility—and here I interpose my Number 5, derived from the same sub-paragraph, (*a*), mainly services again, for that paragraph reads "the use of accommodation (other than coal drops) normally and customarily provided and the services normally and customarily rendered by the Commission". So that those are distinct from one another, and I would number those services 5, as they are quite clearly *ex hypothesi* services as opposed to facilities. Then loading, which Mr. McKenna numbered 5, I would venture to number 6, and that would also be services.

The Act having itself drawn the distinction between services and facilities—

(*President*): You say that the whole of 5 sub-paragraph (ii) (*b*) is service?

(*Mr. Raeburn*): Sub-paragraph (*b*) consists in loading and unloading. Use of plant and machinery is a facility; loading and unloading are services. It is a quite clear, simple and easily ascertainable and logical distinction. It is true, as Mr. Blain has pointed out to me, that in the case of sub-paragraph (ii) (*b*) of 5, the use of plant and machinery has been included in a charge for loading and unloading, and that in itself may be objectionable if the Statute is to be literally applied, for strictly speaking, the Statute appears to require a distinction, and a clear-cut distinction, to be drawn between what might, perhaps, be otherwise described as active as opposed to passive services. If one wanted to use services and subdivide them, it would be more convenient, instead of talking about passive services, to talk about facilities, which are afforded when the active agent is the trader himself as opposed to the railway commission. Where the active agent is the Commission that provides, then they are described as services. When the party to be regarded as active is the trade who uses them, they are called facilities.

Those are easily distinguishable. The Act requires some meaning to be given to the meaning to be given to the distinction between services and facilities, and, if I may venture to remind you, you invited those who followed Mr. McKenna to suggest a distinction between services and facilities, and I am taking advantage of that invitation.

(*President*): I do not quite follow, Mr. Raeburn, at the moment, what distinction you are suggesting between a service and a facility as a matter of definition.

(*Mr. Raeburn*): I am suggesting the distinction is as to who is the person who is active in the provision or enjoyment, as the case may be, of these things. In the case of conveyance it is quite clear that the railways are active and that the enjoyment is simply in the trader. In the case of accommodation the railways are not active, the active party is the party using the accommodation. That is a facility. The railway stands aside, in a sense, if I may illustrate it in that way, and says: "You may use our yard; you may use our storage space", as the case may be. That is what I call being passive and, therefore, affording a facility as opposed to rendering a service. That is why I drew attention to these various items as illustrations—and, of course, they are only illustrations—of the distinction between a service and a facility. Parliament requires some distinction to be drawn, that is quite clear, because the two things are separated in the Act; and it falls, of course, to the Tribunal to draw the line. I am merely here to propose how the line should be drawn. Somehow or other the line has got to be drawn, and maximum charges it would seem, owing to the contrary distinction between services and facilities appearing in the governing clause which requires maximum charges to be fixed, strongly suggests, in our submission, that maximum charges should separately be fixed in respect of services and in respect of facilities. That would meet the whole point which has been made by Mr. McKenna, and with which I associate myself on behalf of our clients. That would meet that difficulty, because in that case the trader who required services only would be subject to a maximum charge for services and the trader who, in addition to that, required facilities would have to pay subject to the maximum charge for facilities. What is more important, the trader who did not require facilities would not find that he was paying within a maximum charge which automatically covered the facilities he did not require.

(*President*): Is the provision of trucks by the railway company a facility on your argument?

(*Mr. Raeburn*): I should submit it was indeed; but if the railway company also carries the goods in those trucks, to that extent it is a service and, therefore, the charges would have to be adjusted accordingly. But I realise that to some extent this trenches on merits——

(*President*): Hardly, does it? If services and facilities are to be separately dealt with in the Scheme and the provision of trucks is a facility separately identifiable, then the Scheme is bad because it does not deal with them separately.

(*Mr. Raeburn*): That is the limit of my present argument. I am only reserving the other aspects of the matter for later on, when it becomes necessary to discuss facilities in the event of the Tribunal ruling against us today.

(*President*): I understand that, but I am rather anxious to fix in my own mind some idea of the number of different things done or suffered for which, on this view, any scheme must make provision.

(*Mr. Raeburn*): Yes. I submit that they are identifiable for the reasons that I have given; they are identifiable and they are separable and were so meant to be and required to be by Act of Parliament.

Consequently, the matter resolves itself into a fairly simple issue on that view, the issue simply being: what are to be determined by the Tribunal to be services and what are to be facilities? Of course, in the first place, it would be the duty of the Commission to present the Scheme in such a form that they themselves specify what are services and what are facilities coming under the different maxima. If that is to be challenged, then it will be a question for the Tribunal to determine whether they had distinguished rightly or not rightly. That is the machinery by which one arrives at the result required by Parliament.

I am only concerned for the moment to submit to the Tribunal that to take a comprehensive maximum and say that covers services and facilities indiscriminately, whether both are enjoyed or one only is enjoyed, or partly one and partly the other, is contrary to what is required by the Act of Parliament and therefore *ultra vires* the Commission in presenting this Scheme in this form, and that the Scheme ought to be revised so as to comply with the requirements of the Act before the matter can be discussed upon its merits and considered by the Tribunal.

That is my short point in, as I say, otherwise adopting the arguments of my learned friend on both these submissions.

(*President*): Mr. Raeburn, suppose we had a list of facilities of different kinds, three, four, five or seven different facilities; would you say it would be *ultra vires* the Act to have the same maximum charge for each of those three, five or seven facilities?

(*Mr. Raeburn*): No, Sir. In my submission, it would be a pure coincidence and quite irrelevant to any issue.

(*President*): That was not quite the question I asked. Would your argument be that a scheme so drawn would be *ultra vires*?

(*Mr. Raeburn*): A scheme drawn to provide the same maximum figure applying to services as applied to facilities?

(*President*): You have not quite followed. You have introduced me to the topic of facilities; and you have instanced a number of operations done or suffered by the railway company or the Commission which are properly to be regarded as facilities and not services. They would obviously be different in their nature and different in their extent. What I am asking you is; on your argument, suppose a scheme were lodged which specified six wholly different facilities, but specified the same maximum charge for those wholly different facilities. Would your argument go to the length of contending the scheme was, because of those features, *ultra vires*?

(*Mr. Raeburn*): I do not think I could, because if it were determined by the Tribunal that those were facilities, the Act of Parliament would be complied with.

(*President*): I am asking you not to consider the scheme as altered by us and confirmed. That raises a different question. What we are now considering is the *vires* of the scheme as lodged.

(*Mr. Raeburn*): I am not considering it as altered by the Tribunal. I am considering it as a scheme as lodged. If the Act of Parliament says that services are to be distinguished from facilities, as I am submitting it does, and if a maximum figure is to be determined in respect of what are services and in respect of what are facilities, the scheme is at any rate, *intra vires*. It may be objectionable in other respects, but that is another matter.

(*President*): Let us forget services for the moment. We have now got a category of facilities which must include a large number of different things. I call them "things" because they are things either done by the Commission or, as you suggest, suffered by the Commission. We draw up that list, and let us assume a scheme which does contain a list, long or short, of different kinds of facilities.

(*Mr. Raeburn*): Yes.

(*President*): Suppose such a scheme, having drawn up that list, puts the same maximum charge to each of those specified facilities. Would you say that that was *ultra vires*?

(*Mr. Raeburn*): Yes; because it is not required to put separate maximum charges to each, but to all the facilities. That is what is here required. They are to fix maximum charges in respect of two things, one is services and the other is facilities.

(*President*): Are you saying it would be *intra vires*, have specified one by one all the facilities anybody could think of, to say the same maximum charge was to be payable in respect of each of those facilities?

(*Mr. Raeburn*): No, Sir. I do not think the Act of Parliament requires a disintegration of facilities or, for that matter, on my submission, of services, except in the sense in which Mr. McKenna made the distinction, which is really a slightly different way of disintegrating from the way I am now putting it. But the Act of Parliament does not require. It would go, as I have said, to the merits later on as and when the scheme came before the Tribunal, but not on the question of the *vires*. As regards *vires*, it would be *intra vires* provided there was that separate maximum provided. The other point is that it might be *ultra vires* as offending against Mr. McKenna's second argument. That is another matter entirely; but apart from that, on his first point, I cannot venture to submit it would be *ultra vires* if it were a figure which covered all facilities properly defined as opposed to all services. There would still be a remedy on the merits later on when it came before this Tribunal. That is the only point. I think I have answered your question.

(*President*): Yes. You are saying services must be dealt with separately from facilities.

(*Mr. Raeburn*): That is what I am saying.

(*President*): But, once you have separated a group of services from a group of facilities, the maximum charge, so far as *vires* is concerned, can be the maximum charge for all the services.

(*Mr. Raeburn*): Yes, subject only to the point which Mr. McKenna made as his second point, that is to say, that there must be a reasonable equality for what is provided under, so to speak, one umbrella as against what is provided under the same umbrella in a different category.

(*President*): That is merits.

(*Mr. Raeburn*): I think that is merits, yes. On the question of *vires* that is how I respectfully invite the Tribunal to read the Act.

(*President*): You have a number of *vires* points, have you not, Mr. Raeburn?

(*Mr. Raeburn*): Yes. I am afraid I did not deal with those.

(*President*): Shall we go through them?

(*Mr. Raeburn*): If you please. If you have our Objections before you, I have dealt with 5 (*b*) and I have dealt with 8, which is Mr. McKenna's second point. Then there is 19 (*b*), which goes only to one paragraph and does not go to the root of the section at all. I do not know whether it is convenient to take that today? I can certainly do so if it is convenient to the Tribunal that that should be disposed of, but it only goes to the question whether that one paragraph can stand or whether it cannot.

(*President*): I would rather like to forget the law and deal with it all in one go. It may be that it will come down to this question—I do not know whether it does, I require your assistance on it—suppose we held that one clause in the Scheme was *ultra vires*. Would that mean that the Scheme as a whole was *ultra vires?*

(*Mr. Raeburn*): I will certainly deal with it.

(*President*): Let us look at this particular head.

(*Mr. Raeburn*): 19 (b) takes the point that the inclusion of paragraph 17 of the draft Scheme is *ultra vires* the Commission and the Tribunal. Paragraph 17 says this: "All terms and conditions applied (whether by agreement in writing or otherwise) as provided or permitted by this Part of this Scheme shall be deemed to be reasonable". In my submission, it is not competent for the Commission, in anticipation of any terms or conditions which it applies or is going to apply so long as that part of the Scheme, Part III "Terms and Conditions of Carriage", shall generally speaking authorise the Commission to impose terms and conditions, that those terms and conditions shall automatically be deemed to be reasonable, because that is really assuming, in respect of the application of terms and conditions under that Part of the Act, what are virtually dictatorial powers. It is in itself so unreasonable as not to be within the powers contemplated by the Act in requiring the Commission to bring in a Scheme to say "Whatever terms and conditions we choose to apply under our general powers of putting down terms and conditions must of necessity be reasonable" because this scheme, once it has been sanctioned, has, of course, the effect, practically of a Statute. For example, it has been laid down that the Railway Standard Terms and Conditions of Carriage, which were agreed with the approval of this Tribunal's predecessor, should be deemed to be reasonable, but those are merely some of the terms and conditions which apply and there is no need for paragraph 17 if it merely refers to those because they are already to be deemed to be reasonable.

(*President*): Under the Railways Act?

(*Mr. Raeburn*): Yes.

(*President*): But they will disappear with the coming into force of the Scheme. They disappear as deriving their validity from the Railways Act if the Scheme is confirmed in this form. Thereafter they will derive their validity from this Scheme.

(*Mr. Raeburn*): I am not quite sure whether, once they derive their validity from the Scheme, they do not import at the same time their impeccability. I am not quite sure about that.

(*President*): Perhaps we need not discuss that. If we are to be impeccable by virtue of the 1921 Act, then paragraph 17, so far as it refers to the standard terms and conditions, is doing nothing extraordinary; it may be doing something unnecessary.

(*Mr. Raeburn*): That is what I am complaining about. If it is doing something unnecessary, then it must be given a further meaning. Indeed, it is wide enough to be given a further meaning and that is what I am complaining about, that it imports an impeccability for conditions imposed by the Commission quite apart from the standard terms and conditions.

(*President*): Let us just see how far it goes by looking at Part III. Part III, paragraph 12, deals with the standard

terms and conditions. Those, you say, are now made impeccable. They have statutory recognition and force, have they not?

(*Mr. Raeburn*): That is so.

(*President*): In so far as paragraph 17 continues or declares as being valid that impeccability, it is doing nothing very extraordinary. It may be *otiose*, but it does not do anything worse than that.

(*Mr. Raeburn*): It is only doing something extraordinary in that if it applies to them it is unnecessary and should not be there.

(*President*): That I think we can probably deal with when we get to the clauses somewhere about October of next year. Then paragraph 13 is a positive provision, is it not?

(*Mr. Raeburn*): That is so: " . . . the terms and conditions upon and subject to which merchandise is, apart from special contract, to be carried by the Commission shall be company's risk . . ." In so far as it merely means that they are conditions which shall involve the company's risk as opposed to the trader's risk and if it says no more than that, as you say, they are positive; but that makes it possible for the company's risk conditions to be specified in a form which might be highly objectionable to the trader but which must be regarded as reasonable. It is a general phrase which, no doubt, in insurance law has a well understood meaning; but it does not necessarily involve standard conditions beyond this, that the risk must be carried by the Company. The company's risk conditions could be whittled down in an utterly unreasonable way and they would have to be deemed to be reasonable and would apply "without any special contract in writing to the carriage of merchandise".

(*President*): Very well. Then paragraph 14, "Dangerous goods".

(*Mr. Raeburn*): ". . . the terms and conditions upon and subject to which dangerous goods may be carried by the Commission shall be such as may from time to time be determined by the Commission". That in itself is an extremely wide power which, if they are entitled to impose conditions which cannot be challenged on the ground that they are utterly unreasonable, would be positively tyrannical.

(*President*): Very well. Paragraph 15 is merely empowering special contracts, is it not?

(*Mr. Raeburn*): It is doing more than that. It is empowering the Commission to lay down its terms and conditions which must apply to any contract upon which dangerous goods may be carried.

(*President*): 15 does not do that.

(*Mr. Raeburn*): I thought you were still on 14, Sir; I beg your pardon.

(*President*): No. Say anything more you wish to say about dangerous goods, Mr. Raeburn.

(*Mr. Raeburn*): I had finished, Sir. "The Commission and any trader may agree in writing to any terms and conditions they think fit for the carriage of any merchandise". Of course, if they "may agree" the trader is protected because he need not agree. I have no objection to that. That cannot be caught by 17, as I see it.

(*President*): No. 16 is a mode or remedy, is it not?

(*Mr. Raeburn*): I think so.

(*President*): That will not raise any *vires* point.

(*Mr. Raeburn*): I think 16 would raise no difficulty.

(*President*): Then 17.

(*Mr. Raeburn*): 17 is the clause we are objecting to on the grounds I have given and on the further ground that it would cut down the, so to speak, escape clause for the trader which is provided by section 7 of the Railway and Canal Traffic Act, 1854. Section 2 is the section which says the Company shall afford all reasonable facilities for traffic and I think that will not make any difference, but section 7 says: "Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: Provided always that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods or things, as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable".

That is a provision for the conditions being just and reasonable which would be cut out if, in advance, it had to be assumed that the conditions were in fact just and reasonable, and in that sense, in my submission, it is *ultra vires* the Commission to assume the power to make conditions which in advance shall be deemed to be just and reasonable overriding the remedy of the trader under section 7 of the Railway and Canal Traffic Act, 1854, to come to the Tribunal for the determination as to whether certain conditions are just and reasonable.

(*President*): We are discussing whether this clause is *ultra vires*, not whether it is a good clause or whether there are objections to it. Why does a clause of that sort fall out of the empowering section, section 77 (i), of the 1947 Act?

(*Mr. Raeburn*): "A charges scheme may, as respects any of the services and facilities to which it relates, adopt such system for the determination of the charges, or, as the case may be, the charges and other terms and conditions, which are to be applicable as may appear desirable, and in particular and without prejudice to the generality of the foregoing words, any such scheme may" and then it says what it may provide for in particular. In my submission, that does not override the provisions of the Statute, which requires conditions to be just and reasonable.

(*President*): What Statute?

(*Mr. Raeburn*): The Act of 1854, section 7, which I was reading.

(*President*): Are you submitting that a Scheme cannot validly provide for anything which is contrary to the Statute?

(*Mr. Raeburn*): I am not saying that they cannot validly provide for anything which is contrary to the Statute, but it cannot override a right given by Statute; it cannot take away that right from the trader and provide exactly the contrary—because that is what it does provide. The statute of 1854 gives the trader the right to come to the Tribunal to determine as to what is just and reasonable in conditions made by what was in those days the Railway Companies.

(*President*): What do you make of those very difficult words at the end of section 78, subsection 5?

(*Mr. Raeburn*): May I read section 78 (5): "Any scheme confirmed by the tribunal shall be published in such manner as may be specified by the tribunal in confirming the scheme and shall come into force on such date or dates as may be so specified; and the scheme shall have effect notwithstanding anything in any statutory provision relating to the subject matter of the scheme". That presupposes that the scheme has been approved.

(*President*): It seems to pre-suppose that the scheme as approved is not *ultra vires* or open to objection because it is contrary to a statutory provision, does it not? It would be very odd if you were to say that the scheme as lodged, being contrary to statutory provisions, was *ultra vires*.

(*Mr. Raeburn*): I should have submitted that once the Tribunal has accepted the scheme, then it is to override, perhaps, some obscure statutory provision which may be dug out by somebody afterwards.

(*President*): It does not say "an obscure statutory provision", it says "any statutory provision".

(*Mr. Raeburn*): I venture to submit that as the scheme cannot come into force unless it has been passed by the Tribunal and approved by the Tribunal, the Tribunal is not going deliberately to regard the Commission as entitled to propose a scheme which is going to override rights arising out of a Statute. It might, *per incuriam*, allow some statutory provision to be overridden, in which case Parliament has said: "You shall not come back now after you have gone past the Tribunal and complain that the Scheme is contrary to a statutory provision and, therefore, the Statute overrides the Scheme". If it be so that the

Scheme in the end overrides a Statutory provision, so be it; but that is not the same thing as saying that any scheme may be proposed which takes away a statutory right and that that is *intra vires* in the very face of the Tribunal, because they are to watch the rights of all parties concerned.

(*President*): I should have thought it would be very odd to say the Commission cannot come forward and propose something which is contrary to a statutory provision but the Tribunal, without it having been made the subject of any Public Inquiry or any discussion, can insert something which is contrary to a statutory provision. I should have imagined that any proposal involving the abrogation of a statutory provision was the one thing which ought to be in the scheme as lodged so that it could be made the subject of discussion at the Public Inquiry.

(*Mr. Raeburn*): It may be. It may be lodged for the purpose of being made the subject of public discussion, also to be rejected, apart from the earlier point, on the ground that it offended against a Statute and, therefore, the policy of the law. There is nothing to stop it being lodged in that form, but there is everything to stop it being approved in that form as being within the powers of the Commission to enact, if I may use that expression a little inaccurately in view of what it says here, with the approval of the Tribunal. It may be a somewhat subtle way of talking about *vires*, but it comes to the same thing in the end. I fully accept, if I may say so with respect, that there is nothing to stop the Commission proposing anything. It may, indeed, be very salutary that they should propose there what they really want; but it does not make it necessarily *intra vires* if it offends against an Act of Parliament. If it were otherwise the Commission could propose a scheme which went contrary to practically every Act of Parliament and could say, "This is *intra vires* anyway, even across the question of whether the Tribunal think it is reasonable." In my submission, that is not a very realistic way of approaching it, even if it might seem to be a convenient way. It is really, is it not, a question whether it is a point to be dealt with at this stage or whether it is a point to be dealt with on the merits later on. I do not know that it matters very much whether it is dealt with on the ground that it is obviously *ultra vires*, or whether it is dealt with on the ground that it is objectionable because it attempts to override a statutory provision.

(*President*): You had better tell us whether you want us to rule whether it is *ultra vires* or not. We shall be quite content to deal with it on its merits when we get to clause 17.

(*Mr. Raeburn*): As a matter of convenience I submit that the best way of dealing with it is to deal with it now, because we are all here and my learned friend can have an opportunity of justifying it, if he can. If the Tribunal should be against me on the question whether it is *ultra vires* or not, that does not preclude me from taking an objection on the merits at a later stage. I do not want to take any more time on it now. I merely put it in that form.

(*President*): Very well. What about clause 22?

(*Mr. Raeburn*): Clause 22 (3). There much the same point applies. If I may, I would refer to section 22, subsection (3), of the Act of 1953. That section reads: "If the Transport Tribunal are so satisfied"—that is to say, if they "satisfy themselves that, in the circumstances in which it is to be carried, the merchandise cannot reasonably be carried by any means of transport other than railway"—" they may, on the application of the complainant, by order require the Commission to disclose to the complainant any charges which are being made by the Commission for the carriage by railway of such merchandise as may be specified in the order between such places as may be so specified, being the carriage of the same or similar merchandise in the same or similar circumstances". The clause to which objection is taken in the Scheme is clause 20 (2): "Save as aforesaid and notwithstanding the requirements of any statutory provision, the Commission shall be under no obligation to publish any charges provision for which is made by this Scheme". That is in flat contradiction to the requirements of the very Act under which this Scheme is brought forward, because if they are not to be required to publish any charges the Tribunal have not the oportunity of hearing a complaint upon which they can require the Commission to disclose to the complainant any charges.

(*President*): Does one not look at section 20, subsection 2, sub-head (*e*), which is something which a charges scheme must provide?

(*Mr. Raeburn*): "It shall secure that the Commission have to publish the maximum charges but do not have to publish any other charges". That is overridden to this extent, or modified to this extent, that the Tribunal can, in circumstances set out in section 22, order the Commission to disclose to the complainant any charges which have been made.

(*President*): Do you not think there is a distinction between "publication" and "disclosure"?

(*Mr. Raeburn*): Disclosure is merely an aspect of publication. You cannot have disclosure without publication in law, I should have thought.

(*President*): Cannot you? When you make an Affidavit of Discovery are you publishing it?

(*Mr. Raeburn*): Technically you are, exactly in the same sense as in libel you are publishing something if you say it in a room to somebody privately.

(*President*): I do not think I shall take much interest in the libel basis, but is not the distinction here that the charges scheme must, in effect, prohibit the publication of any charges other than the maximum charges? That is section 20, subsection (2), sub-head (*e*), is it not?

(*Mr. Raeburn*): It does not prohibit it. It does not require it.

(*President*): It shall secure that they have to publish maximum charges but do not have to publish any other charges.

(*Mr. Raeburn*): Yes. It shall secure that they are not obliged to publish any other charges; not that they do not publish them, they are not to be obliged to publish them. That is so, but then there is this exceptional case where they have to disclose them, which, I submit, is a branch of publication. Indeed, it does not necessarily mean disclosure in such a way that they cannot be made public in the course of proceedings, because if they have to disclose them for the purposes of a dispute there is nothing to prevent the charges so disclosed from being made public in the course of examination or cross-examination in public proceedings.

(*President*): But how do you distinguish the wording of section 20, sub-section (2), with the words of the Statute in section 22, sub-section (2), sub-head (*e*)?

(*Mr. Raeburn*): I think what is really meant by sub-head (*e*) is this: There is to be a definite obligation upon the Commission to make public, without any proceedings or any special order or anything else, their maximum charges, but the Commission is not to require them to make public, as a matter of course, any other charges.

(*President*): That is putting it a little inaccurately, if I may say so. The opening words of that sub-heading are "it shall secure that the Commission", and then it goes on "do not have to publish any other charges".

(*Mr. Raeburn*): That means publish as of course. They do not have to publish them in the same circumstances in which they do have to publish their maximum charges.

(*President*): What I am asking you is this: How do the words of paragraph 2, sub-paragraph (2) differ in any substantial particular from the words of section 20, sub-section (2), sub-head (*e*)?

(*Mr. Raeburn*): I do not think they differ in any substantial respect in the sense that they contradict one another; but they do provide for an exceptional case in which they shall publish *ad hoc* certain charges; which is not the same thing as saying that they would have to publish, as a matter of course and in all circumstances, their maximum charges and will not be required to publish as a matter of course and in all circumstances any other charges. But there are circumstances in which, on the order of the Tribunal and not otherwise, they must publish *ad hoc*——

(*President*): They must disclose.

(*Mr. Raeburn*): They must disclose and, therefore, involve, if necessary, publication.

(*President*): If the paragraph in the scheme which you say is *ultra vires* is the same, in substance, as the empowering words of the statute, how can you say it is *ultra vires*? How can you say it is *ultra vires* if it follows the words of the Act which confers the power?

(*Mr. Raeburn*): Because it does not go far enough to save the exceptional case where the Tribunal orders the charges to be disclosed to the complainant. If this Scheme had statutory force and overrode, by virtue of section 21, sub-section (5), the statutory powers of the Tribunal to order them to disclose anything to the complainant, they could say: "Oh, no. Notwithstanding anything in the Statute we are not obliged to disclose this because it would or might involve publication", and, therefore, the right is taken away which is given by the very Statute under which the Scheme is proposed. In that sense it would be *ultra vires* the Commission to have a Scheme in which they do not save the statutory rights provided by that very Act, namely, the right of complaining, in certain circumstances, to procure from the Commission an order that certain charges shall be disclosed.

(*President*): I do not think much of this point, Mr. Raeburn. I think there is a distinction between "publication" and "disclose".

(*Mr. Raeburn*): I do not want to weary you by taking a point which you have already told me very plainly you do not think much of, but I do venture to say that because at this stage that point is being overruled——

(*President*): I have not overruled it. I said I did not like it.

(*Mr. Raeburn*): Perhaps I should have said "is about to be ruled against".

(*President*): If I was sitting alone and I had to rule, I should rule against it.

(*Mr. Raeburn*): I do not want to choose the wrong words, but I think it is quite clear what I am trying to say with regard to that. It might be that at some later stage, before a Tribunal differently constituted, this very point may come up and it may be held, as it could be held, that the word "publish" is sufficiently ambiguous in paragraph 20, sub-paragraph (2) of the Scheme to cover disclosure, and I am only anxious that I should be protected at the earliest possible moment against any such ambiguity and I am taking the point in this form.

(*President*): Very well. I think it will be convenient to hear you after the adjournment, Mr. Blain.

(*Adjourned for a short time.*)

(*President*): We have not yet had a complete list of everybody representing every Objector. If there is anybody here representing an Objector who has not yet filled up the form which, I gather, is available, it would be convenient if they would do so as soon as possible to secure, among other things, that their name gets on to the printed note of the proceedings.

(*Mr. Blain*): I appear on behalf of the Brewers' Society. What you have just said makes me hope that you have them on the list.

I want, if I may, Sir, with some feeling of trepidation in that I am following, in effect, two leaders who have dealt with the point already, to ask you to give just another moment or two of attention to that first point taken by Mr. McKenna and enlarged upon by Mr. Raeburn, who leads me for other Objectors.

(*President*): Do not have any trepidation, Mr. Blain; I do not think anything I said to Mr. McKenna showed any unwillingness to attend carefully to everything he said.

(*Mr. Blain*): My trepidation is not due to any unwillingness to attend on your part, Sir, but that it is unlikely I could improve upon their performance.

I would ask you to look first of all at Section 20, subsection 2, of the Act again.

(*President*): Which of the Objections are you speaking to?

(*Mr. Blain*): Of the submitted Objections, Sir?

(*President*): Yes.

(*Mr. Blain*): Paragraph 1. Before I come to the other paragraphs—I hope you will not think we ought to have set all these out editorially, Sir—we oppose on the general grounds contained in paragraphs 1 to 6 of the Notice of Objection put in by the Traders' Co-ordinating Committee and this is covered by paragraph 5 of that Notice.

(*President*): You are on the main part, the perambulatory words of the Objection?

(*Mr. Blain*): Solely on that, Sir, and solely on the first point.

As I see it, Section 20, subsection 2, of the 1953 Act, if we look at sub-subsection (*b*), we find "It shall fix"—that is to say the Charges Scheme shall fix—"maximum charges" for what? One goes back to the main part of sub-paragraph (2), "Every charges scheme shall, as respects the services and facilities to which it relates, comply with the following requirements", so it shall fix maximum charges for services and maximum charges for facilities; and the question, as my learned friend pointed out, is whether in simply fixing one maximum charge it has complied with that or whether it has to be two maxima, whether mathematically they happen to be the same or not. If you would look once more at paragraph 5 of the Scheme itself, the matters covered by that paragraph seem to get more and more as each Advocate rises. Mr. Raeburn raised it to six, and I think it is seven matters.

(*President*): Are there any more Advocates going to rise?

(*Mr. Blain*): Not that I know of, Sir!

(*President*): Very well; it is seven.

(*Mr. Blain*): I think it is seven: the first is conveyance, that much is clear; the second is the provision of wagons, 1 (*a*).

(*President*): Is that an accommodation or a service?

(*Mr. Blain*): I think provision of wagons is service. I was going, first of all, to enumerate them and then I was going to have a word, if I may, about that. The second is provision of wagons whichever it may be; the third is provision of sheets, whichever that may be; the fourth, in 2 (*a*), is the use of accommodation; the fifth, in 2 (*a*), is the use of services—I should have said the fourth was the use of accommodation provided and the fifth the use of services rendered, and it may be that you will feel that at least in the Scheme as drafted the Commission have adopted as the distinction that you provide accommodation and you render services; I do not know. Then the sixth, in 2 (*b*), is assistance in loading or unloading and the seventh is in the last line and a half of 2 (*b*), the covering and uncovering of goods in transit, so that there are, in fact, seven of them.

I do not feel, and I hope this is right, that it is of assistance to the Tribunal for me on behalf of the Brewers' Society to sort out which of those are services and which are facilities. What is perfectly clear is that when you look back at the Act itself, at Section 20, subsection (2), services are not facilities and facilities are not services. That, *ex hypothesi*, follows from the first rule of interpretation that Parliament is deemed to mean something by every word it uses and by putting in two separate things—services and facilities—it means two different things, whatever the dividing line may be. The dividing line, one appreciates, may sometimes be quite difficult to define, but it is the statutory duty of the Commission to produce a Scheme which complies with what Parliament has enacted and the onus upon them, at least in the first place, is to sort out what are services, and make it clear in their Scheme, and what are facilities and make that clear in their Scheme. It is their onus to satisfy the Tribunal before they can get a Scheme confirmed.

That, in my submission, this draft Scheme clearly does not do. From paragraph 5 itself—and you have only to look at one little matter in sub-clause 2 (*b*); actually I think it is 5 (1) (ii) (*b*) (and may I ask you mentally to substitute brackets for the commas; it makes it easier for me to develop my own argument) the beginning of the second line starting with the word "including" and ending in the third line, after the word "unloading" (this is in the case of terminal stations) "assistance in loading and unloading so far as is normally and customarily afforded".

"Assistance" must be a service; that is a thing they render, not a thing they provide including the use of plant and machinery—that is a thing they provide and not a thing they render—so that that must be a facility. In other words, in those little three lines of sub-sub-clause 2 (*b*), a facility is said to be included in a service although in the Act itself Parliament has differentiated and expressly said that they are to provide charges in respect

of two totally different things; services on the one hand and facilities on the other. That is, perhaps, a little point of drafting that may have gone wrong but that illustrates, in my submission, the arguments my learned friends have put forward.

The other interest in the language of it is that one can only assume in the draft Scheme as it stands that when the Commission used the word "accommodation" as opposed to "services" that they are treating accommodation as synonymous with at any rate certain facilities. I suppose accommodation is a facility and therefore we come to this position that if you should ask what these various matters are, the conveyance itself needs no defining; the provision of wagons—that is a provision and, therefore, I say a facility—the provision of sheets and therefore a facility; the use of accommodation and therefore a facility; the rendering of services, clearly a service; the assistance in loading, a service because you render assistance although that includes the use of plant which is provision and therefore a facility; the covering and uncovering of goods clearly a service—and, incidentally, on the question of the ten little nigger boys in reverse, it is eight things, not seven, because when you look at the following sub-paragraph, at one end of the journey you may have a private siding and at the other a terminal station and in the case of private sidings you get delivery and receiving which, I suppose, is a service. So there are eight different things, not always all applicable, but eight different things covered by one introductory phrase to Clause 5, which the maximum carriage charges cover. They cover up to eight different things all in one; some are services; whatever dividing line you take that could not in my submission be gainsaid; others are facilities, and again whatever dividing line you take, that could not be gainsaid. Clearly some are the one, some are the other and as has already been pointed out sub-section (20) sub-section (2) sub-sub-section (*b*) makes it the statutory duty of the Commission to produce a Scheme which fixes maximum charges for services and maximum charges for facilities. In my submission they have not done that and that is why—and I hope it was not merely repetition—I submit to you on behalf of the Brewers' Society that basically this Scheme as drafted is *ultra vires*.

(*President*): Does anybody else wish to raise an *ultra vires* point?

(*Mr. Ashburn*): If there are no further Members of the Bar who wish to do so, perhaps the Solicitors might now take their turn?

(*President*): Yes; whom do you represent?

(*Mr. Ashburn*): I represent the Hull Incorporated Chamber of Commerce and Shipping. We are, of course, the traders in the Port of Hull, Hull being a Transport Commission port. We come here more in sorrow than in anger, to say through the Court to our friends the British Transport Commission, that although we are quite sure that they have the interests of the Port of Hull at heart, we do not always agree with them in the way in which they serve its interests.

In that spirit, Sir, I take the point of my first Objection, and it is the only one which concerns you now, namely, that section 76 of the 1947 Act is still with us, limited as it is by section 20 of the 1953 Act. Section 20 tells us that the charges which are to be made by the Commission are to be determined by Part V of the 1947 Act; in other words, the charges as determined by schemes. When one asks: What schemes? one is thrown back upon section 76 of the 1947 Act, and that tells us: "The Commission shall from time to time prepare, and submit to the Transport Tribunal for confirmation drafts of schemes for determining, as respects the services and facilities provided by the Commission to which the schemes respectively relate", and then it carries on: "It shall be the duty of the Commission, within two years from the passing of this Act or such longer period as the Minister may allow, to prepare and submit the draft of a scheme or, as the case may be, drafts of a series of schemes, relating or together relating to all the services and facilities provided by the Commission under paragraphs (*a*) to (*c*) of subsection (1) of section two of this Act". Then I come back to section 20; subject to what is said in section 20, what the Commission has chosen to do is to go for a series of schemes; they have not submitted an all-embracing scheme dealing with all the charges in (*a*) to (*f*) of section 20. They have dealt to-day with sub-paragraph (*a*), and in my submission that does not comply with their obligation to give us a series of schemes together relating to all the charges.

It may not in many circumstances be of the least importance, but it is of some importance to me and to those whom I represent. May I just say what I can about those words, "a series of schemes"? I have not been able to discover any legal authority in which the word "series" has been considered which I can put to you; I cannot do more than to ask you to interpret it in its ordinary sense, its ordinary dictionary sense, and in the sense in which it is used in ordinary everyday language.

The dictionary sense of the word "series" is "a number or set of things", and I think that is what is important—a number of things relating each to the other, linked together in some way.

My difficulty, Sir, is this; it is our old friend the Dock Railways, which has been debated in this Court on other occasions going back many years. In relation to these Dock Railways, there are overlapping expenditures and overlapping services, and that is what we in Hull are particularly concerned with. We cannot be really helpful in relation to this Scheme unless we know what is going to happen under the Docks Charges Scheme.

(*President*): You are now dealing with your paragraph 1?

(*Mr. Ashburn*): Yes, Sir; that is my only one.

(*President*): Are you saying that we cannot begin an Inquiry into any matters now falling within section 20 of the 1953 Act until there are drafts in existence and lodged with us which cover the whole field?

(*Mr. Ashburn*): That is my submission, Sir.

(*President*): I do not know how many Inquiries we have had into draft passenger charges schemes, but we have been proceeding for a long time on the footing, and people have been paying fares for a long time on the footing, that what we did had some statutory validity.

(*Mr. Ashburn*): But having accepted your decision, and going on with the Inquiry, it would be too late for anybody to say anything about it.

(*President*): If it is *ultra vires*, you cannot make it *intra vires* by accepting jurisdiction.

(*Mr. Ashburn*): I think really it is more essentially a jurisdiction point than an *ultra vires* point. I say that this Court ought not to look at this Scheme until at least a draft of the Docks Charges Scheme is there.

(*President*): The Act provides that when a draft scheme has been submitted, various things have to happen; notices have to be given; Objections have to be allowed, and a Public Inquiry has to be held.

(*Mr. Ashburn*): But that would not prevent the whole series being submitted to the Court, and the Court saying that it obviously would not consider them all together, but successively.

(*President*): The statute says that when the draft of a scheme is put forward it must be considered at a Public Inquiry, and we must make some Order about it; you are now saying that we must wait until all the draft schemes are put forward?

(*Mr. Ashburn*): Yes, Sir; at least when there is going to be some overlapping between one scheme and another. I think I might properly limit my submission to that case.

(*President*): How can we tell whether there is going to be overlapping until we have seen the two things that are going to overlap?

(*Mr. Ashburn*): Yes, Sir, but the Railways and the Docks are bound to overlap between this Scheme and the Docks Charges Scheme; it cannot be avoided. These Objectors are going to be in obvious difficulty if we made certain submissions to you now; obviously we cannot go into a roving inquiry about Docks charges at this Inquiry; yet we cannot properly make sensible comments on that part of the operation under this Scheme unless we know what is going to happen under the Docks Charges Scheme. If the Commission were to tell us that the Railways are railways wherever they are, whether they are on docks or whether they are not—providing they are on Transport Commission's docks, of course—that would be an end of my point, but I do not think that is their point of view. This is a very real difficulty, Sir; it is not a point which has been taken just to try to be awkward.

(*President*): It all turns on the words which give the duty of preparing a draft of a scheme or a series of schemes.

(*Mr. Ashburn*): I am not here to embarrass the Court or the Commission by pressing this matter to its ultimate conclusion, because I realise the obvious practical difficulty. The only thing I want you to be sure of is how difficult it is for us to try to be helpful.

(*President*): Thank you, Mr. Ashburn. Is there anybody else?—Apparently not.

(*Mr. Harold Willis*): May it please the Tribunal; in this matter I appear with my learned friends Mr. Maurice Lyell, Mr. Fay, Mr. Stockdale and Mr. Emslie of the Scottish Bar, and I would desire to deal shortly with the various legal points which have been submitted.

The first point is the point which was submitted by my learned friend Mr. McKenna and which has been followed by my learned friend Mr. Raeburn and my learned friend Mr. Blain; that is the point I should like to take first. It is, in my submission, necessary in order to appreciate——

(*President*): I am not quite certain whether Mr. McKenna's point was followed by Mr. Raeburn except in a chronological sense, Mr. Willis.

(*Mr. Harold Willis*): My learned friend Mr. McKenna made two points which were to some extent linked together but they were, in effect, two distinct points. Mr. Raeburn adopted and amplified the first one and so did my learned friend Mr. Blain, as I understood his argument.

A short point that is made on that first matter is that by virtue of the Act it is a statutory obligation on the Commission in this Scheme to provide for separate maximum charges for the conveyance of goods, for the station terminal and the service terminals. That has been expanded by my friend Mr. Raeburn into an obligation to provide maximum charges in regard to facilities on the one hand and services on the other and it has also been referred to by Mr. Blain.

Before one can see what is the true obligation on the Commission in a matter of this kind it is, I think, necessary to look at the Section of the Act rather more fully than my learned friend did. He did not read at all Section 76 which, of course, is the genesis of this matter and I would desire to read that Section first because, in my submission, it is of great importance.

Section 76 says: "The Commission shall from time to time prepare, and submit to the Transport Tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the services and facilities provided by the Commission to which the schemes respectively relate:—(*a*) the charges which are to be made by the Commission, and (*b*) where it is necessary or expedient so to do, the other terms and conditions which are to be applicable to the provision of those services and facilities, including, in particular, terms and conditions as to the liability of the Commission for loss or damage, and it shall be the duty of the Commission, within two years from the passing of this Act or such longer period as the Minister may allow, to prepare and submit the draft of a scheme or, as the case may be, drafts of a series of schemes, relating or together relating to all the services and facilities provided by the Commission under paragraphs (*a*) to (*c*) of subsection (1) of section two of this Act and such other of the services and facilities provided by the Commission as the Commission are of opinion should be dealt with by charges schemes."

So at that stage the Commission are put under obligation to prepare charges schemes in relation to the services and facilities provided under those paragraphs, and turning back to that Section you see what is provided. Section 2 reads: "(1) Subject to the provisions of this Act, the Commission shall have power— (*a*) to carry goods and passengers by rail, road and inland waterway, within Great Britain; (*b*) to provide, within Great Britain, port facilities and facilities for traffic by inland waterway; (*c*) to store goods within Great Britain, whether or not those goods have been or are to be carried by the Commission, so, however, that facilities for the storage of goods which have not been or are not to be carried by the Commission shall not be provided by the Commission except on premises where such facilities are provided for the storage of goods carried or to be carried by them; ".

Therefore, if one looks at that, one gets an idea of the sort of thing as to which we were required to prepare schemes under Section 76, and in my submission, the argument seeking to put a precise meaning on the words "services" and "facilities" is completely beside the point. Those words are regarded as apt words to cover generally the words referred to in Section 2, subsection (1) (*a*), (*b*) and (*c*); (*a*) being plainly something coming within the word "services" and (*b*) and (*c*) being something which can be properly described by the general phrase "facilities", and that is the reason why the draftsman has used those two phrases in Section 76. There was no other intention there at all, but the significant thing, with respect, to have in mind at this stage is that under Section 2, subsection (1) (*a*) the phrase is "carry goods and passengers by rail, road and inland waterway", clearly contemplating the complete operation of carriage and not intending to deal with any artificial splitting of that total operation such as the artificial splitting which was referred to by my learned friend Mr. McKenna, and which has been derived from the experience of the past—conveyance and terminals and so on. It is not referred to at all in Section 2 (1) (*a*), which uses the plain phrase "carriage" equally applicable to these various types of service.

If one pursues that, one gets to this position, that that is our obligation under section 76, and then section 77 amplifies that; and then if we turn to section 20 of the 1953 Act we see how the thing all fits in together, because section 20, subsection (1)—which again has not been read very much, although we have had a lot about section 20, subsection (2)—is the first one we must look at. That section provides: "The charges made by the Commission which are to be determined by or under charges schemes under Part V of the Transport Act, 1947, shall be the following and no other charges", and then it goes on to say: "that is to say—(*a*) charges for the carriage of merchandise or passengers by railway". The word "carriage" is used there, clearly emphasising the intention of Parliament that that to which it was intended the Charges Scheme should relate was the operation of carriage, and not any particular bit of the operation of carriage as is argued. If my learned friend's argument were to be right, instead of in (*a*) "the carriage of merchandise", the section would have to be completely re-drafted, to read: "Charges for the conveyance of merchandise, charges for the provision of station terminals, charges for the provision of service terminals", and so on. But the Act clearly made no such provision, and the phrase used is: "Charges for the carriage of merchandise", and in my submission it is plain on the language so used, that we are entitled under this scheme to fix maximum charges in relation to that service, namely, the service of carrying merchandise by railway; and if that is what the section provides, there is no room, in my submission, for any dissection of the carriage in the way that my learned friends suggest.

That "carriage" is an all-embracing phrase, including what had historically been treated as conveyance, and what had historically been regarded as station terminals and service terminals, as plainly shown by the section to which you, Sir, made reference during the argument, namely, subsection (6): "The reference in this section to charges for the carriage of merchandise by railway does not include a reference to collection and delivery charges". If, of course, carriage has to be given a narrower meaning than we put upon it, then plainly it could not have included collection and delivery charges, and there would have been no point whatever in the provisions in subsection (6).

In those circumstances, therefore, in my submission it is really unarguable to suggest that the phrase "carriage of merchandise" does not cover the complete operation of carriage from the moment the goods are received by the Commission to the moment that they are handed over at the end of the carriage. If that is right, Sir, that of course completely disposes, in my submission, of the whole argument, because the argument can only succeed if my learned friend can show that the obligation under section 20, subsection (1), and section 20, subsection (2), is an obligation to provide maximum charges for these component parts of carriage, and there is nothing in the section that so provides.

My learned friend Mr. Raeburn developed this argument of my learned friend Mr. McKenna in this way: He says, as I understand his argument, that you have to

split everything that comes under "carriage", not as my learned friend Mr. McKenna says, into three components, but into services on the one hand and facilities on the other, and then you have to have separate maxima for those services and those facilities.

I understood Mr. McKenna's complaint on the merits, which did arise incidentally, to be that some traders might have to pay the same maximum although they were not enjoying all the facilities. On my learned friend Mr. Raeburn's argument, apparently he accepts that there could be one maximum charge for the provision of all the facilities, and then you will find exactly the position which Mr. McKenna complains about, because the trader using all the facilities has the same maximum as the trader who uses only one of the facilities. So one sees the sort of difficulties one gets into; and my learned friend Mr. Blain says that it is not really possible or easy, as a matter of law, to say which are services and which are facilities. If we have to have maximum charges for services on the one hand and for facilities on the other, as Mr. Raeburn suggests—and Mr. Blain admits that you cannot really decide which are which—it would appear that we should be faced with a very formidable task in providing a scheme which complied with the Act. Of course it all arises not really following out the basic matter which I referred to in section 2, subsection (1) (*a*), of the original Act, which makes it plain that you do not look at this problem from the point of view of individual little bits of the carriage service—that the carriage of goods is a service looked at generally and other matters looked at generally are described as "facilities"; and the difficulties you get into on any other view are plain. My learned friend Mr. McKenna shrank a little from suggesting that everything which was a service rendered at different stages of the carriage would have to have a separate maximum charge; he was content to say only three, namely, conveyance, station terminals and service terminals, but the logic, reinforced by what other Counsel have said leads one inevitably to this, that you have to provide for maximum charges in relation to every bit of the carriage which can be put into a little separate compartment. You have to provide, for instance, a separate maximum charge for the wagon, a separate maximum charge for the sheeting, a separate maximum charge for all the other matters—all those matters are to form the subject matter of a series of maximum charges. With great respect to my learned friends, that produces a fantastic interpretation of the Act—fantastic when it is appreciated that there was a basic intention underlining the 1953 Act not to complicate the charging powers of the Commission, but to simplify them, and to put them on a level with road hauliers, who make one inclusive charge for the carriage of goods by road.

In my submission, Sir, this first point that is put forward is wholly unjustified in the light of the terms of the sections which are applicable to this matter.

Now may I turn to the second point——

(*President*): Before you turn to that, does the word "facility" occur in the Scheme otherwise than in paragraph 10—or in the Schedule?

(*Mr. Harold Willis*): I think not, Sir.

(*President*): Take the Second Schedule; I do not think myself that it does.

(*Mr. Harold Willis*): No, Sir. Unless there is anything else you desire to ask me on the first point which was raised by Mr. McKenna, I would now desire to deal with the second point, which really is indicated on his Objections, and if I may just look at the Objection, he says in paragraph 2——

(*President*): Do you know the number of this Objection?

(*Mr. Harold Willis*): It is No. 19, Sir; it is paragraph 2 at the bottom of the first page. This is his second point: "The Transport Act, 1953, on its true construction requires that the same maximum charge shall be fixed for the performance of the same service". That is the basic condition on which the whole of this argument proceeds.

With great respect to my learned friend, the Act does not so provide. There is nothing in the Act which says that the same maximum charge shall be fixed for the performance of the same service. Whatever meaning is given to the words "same service", the Act does not contemplate a consideration precisely of an individual particular service; for instance, there is a service which provides for perhaps the carriage of something from A to B, and there is also a service providing for the carriage of something from B to D, and from E to F; but there is nothing which relates the maximum charges specifically to that. The Act requires that there shall be maximum charges for the carriage of merchandise by railway; that is a matter for which maximum charges are provided, and I think I would agree that it would have been open to the Commission under the terms of the Act as a matter of law to have said that the maximum charge for the carriage of goods by railway shall be so and so—one figure only. That, in my submission, as a matter of law would have been good within the Act.

However, in my submission, that basic assumption is not accurate; there was also an assumption of fact in his argument which also is not accurate, and that is the assumption that in the case of the private siding, the cost of sending goods to his private siding was necessarily and in all cases less than the cost of providing a service to a terminal station. That again is an assumption of fact which is not borne out.

There is one little reference which is of interest on that matter; it is in the passage from the Railway and Canal Traffic Act of 1894, which my learned friend read. If I might ask you to be good enough to turn to page 1015 in Browne and Theobald, my learned friend read Section 84 of the 1894 Act, which dealt with rebates on sidings rates, and if you look about half-way down page 1015, you will see this note: "It does not follow that because a siding owner does not require station accommodation he therefore ought to have an allowance in respect of not requiring it. The sidings may be a burden to the Company"—and there is a reference to the case of *Gilstrap, Earp & Co.* v. *Great Northern Railway Co. and Midland Railway Co.*

I submit, therefore, that that basic assumption, which must be the foundation of his legal argument here—an assumption of fact—cannot be accepted. It may be true in some cases, but it certainly may not be true, and the question whether it is provided, having regard to the different conditions applicable to the siding owner and applicable in other cases, is, of course, a matter which will arise, I have no doubt, when the merits of this Scheme are considered, and no doubt my learned friend may be able to suggest certain factors which may lead one way, and I have no doubt that the Commission will put forward factors which will suggest the opposite.

That is on the merits; but on this second point I submit that there is no legal foundation for the argument that because we have in our scheme provided in effect for the same maximum charges for the private siding owner as for the trader whose goods are taken to a terminal station, that that makes the Scheme *ultra vires*, because there is nothing in the language which in my submission has any bearing on that particular argument.

What my learned friend is in effect driven to say is that because the private siding owner is not using all the facilities at the terminal stations that the ordinary trader is using, therefore the conveyance charge which is being made to him must be higher than the conveyance charge which is being made to the other trader, and that in my submission is an argument for which there is no support.

Then may I deal with certain of the other arguments. My learned friend Mr. Raeburn put forward two matters of argument under paragraph 17 of the Scheme. Paragraph 17 of the Scheme, of course, arises in this way: You start off with section 7 of the 1854 Act and section 7 of the 1854 Act contained a provision which has been referred to, but the significance of which, I think, has not been fully appreciated. That section left open in all cases for decision by the Court the question as to whether the terms or conditions were just and reasonable, plainly opening up a very wide field for controversy.

The Railways Act of 1921, section 43, dealt with conditions of carriage, and it provided in terms, in order, I have no doubt, to meet this particular difficulty under the 1854 Act, this in subsection (2) of that section: "When the terms and conditions so settled come into force they shall be standard terms and conditions of carriage for all Railway Companies and shall be deemed to be reasonable". That was the object of that, and in our Scheme all we are in effect doing is to reproduce in paragraph 17 that provision in the Railways Act.

The terms and conditions of carriage provided for in paragraph 12 of the Scheme derive their authority no longer from the Railways Act, 1921, but they derive their authority from the Scheme and the Transport Act of 1947, under which it is made.

(*President*): That is because in the 1953 Act there is the express provision that on the coming into force of the Charges Scheme, Part III of the Railways Act, section 44, ceases to have effect.

(*Mr. Harold Willis*): Yes, Sir—shall be repealed. Therefore, we can no longer rely, having made this Scheme, on section 43, subsection (2), of the 1921 Act, and therefore if we are to be in the same position as we were under the 1921 Act, a condition must be included in the Scheme itself to put us in the same position as we were before. That is the object of that, and I do not think I really need say any more about it.

(*President*): My only doubt about this is whether permission is necessary if a statute, or a subsidiary document having statutory authority, says: These are the conditions on which goods are to be carried—without any express condition saying that they are deemed to be reasonable, no Court could hold them to be unreasonable, could it?

(*Mr. Harold Willis*): It would be difficult, but I should have thought that having regard to the history of this matter, there should be something in the Scheme itself to put the matter beyond all doubt—but perhaps that is a matter which we could consider further. For the purposes of the present argument, I submit it cannot be said that it is *ultra vires*.

(*President*): In any event, it would plainly be a "several" clause, and if by itself it were held to be *ultra vires*, it would not render the whole Scheme *ultra vires*.

(*Mr. Harold Willis*): It plainly does not go to the root of the matter; it is the Objections which go to the root of the matter, which are the ones with which we are mainly concerned to-day. But in my submission this one is *intra vires*; in any event, as you point out, it could be dealt with later.

The other point which my learned friend Mr. Raeburn raised is on the point of the publication; I do not think, in view of what you have said I need say anything more about that.

The Hull Chamber of Commerce and Shipping raised a point which, in my submisison, is really unarguable, having regard to the terms of the Statute. There is nothing in the Statute which requires the Tribunal to have all the schemes in their hands, as it were, before they can take any action on any one of them. There is nothing in the Act that so provides, and the use of the words in Section 76 of the phrase: "The Commission shall from time to time prepare and submit" certainly seems to presuppose that this submission can be spread over a period and not be made simultaneously, as is suggested by Mr. Ashburn.

I do not think I really need say any more about that point. I think it may well be that we can satisfy Mr. Ashburn in regard to the difficulty he feels he is in, but I do not want to say any more about that at this stage. Perhaps we can speak to Mr. Ashburn about that, but on the legal position, Sir, it is, in my submission, quite plain under the Act.

(*President*): I do not quite know, really, how he would be helped if all that Scheme's drafts happened to be in existence at any one time before anyone could begin on any one of them, because they could not all be considered together at one Public Inquiry. I think the only way in which he would be met would be if the Statute provided that the dock facilities charges must be heard first.

(*Mr. Harold Willis*): It is significant to look at the definition of port facilities in the Act, which, of course, is relevant in this matter. I do not think I would wish at this stage to say any more about that except to submit that the point (which is, of course, a point which goes to the very essence of the scheme and is, of all the legal points, the one which the most plainly goes to the jurisdiction of the Tribunal) has no substance at all.

I think I might say this for the benefit of Mr. Ashburn. If you look at the definition of port facilities in the interpretation section of the 1947 Act, section 125, you will see it covers matters which are not covered by this Scheme and which could not, in any circumstances, be covered by this scheme. That, Sir, is all I desire to say on the legal submissions.

(*Mr. McKenna*): If I followed Mr. Willis's argument on the first point, it was this. It does not controvert the position that Section 20 must fix a maximum charge for a service. He argues, however, that the combined operation of carriage is made by this Act one service for which he says it is permissible for the Tribunal to fix one maximum charge. Driven to its logical conclusion, his argument involves that it would be impermissible for this Tribunal to do otherwise than to fix one maximum charge for this single service which he says the Act has made out of the carriage of goods. That seems to me the logical end of his argument, but is he right, with respect?

(*President*): I am shocked to hear that anything is impermissible to this Tribunal. I have always interpreted the words in 77 as to what we may do, namely, such alterations as we think fit, be almost without limits.

(*Mr. McKenna*): With respect, Sir, I do not accept the view that if Section 20 of the 1953 Act requires that there shall be separate maximum charge for each separate service, that is to be given the go-by because there is a provision in the 1947 Act which says that when you have approved a scheme, in effect, that scheme shall be taken to be a good scheme. At any earlier stage than your approval, which will perhaps render the scheme thereafter unquestioned, it is surely proper for any party to say that what you are being asked to do is not that which the 1953 Act says you are to do.

(*President*): I did not mean to suggest anything to the contrary. That is why we fixed today to hear objections which would relieve us of the obligation of doing anything else.

(*Mr. McKenna*): All I am concerned to do for the moment is to point out that my friend's argument on the first point did not seem to deny my major premise that there must be a maximum charge fixed for each service. The argument seemed to be that the Act itself has constituted the carriage of goods a single service for which he says it is permissible to have one charge, to which I would add; "it is necessary that there should be one charge and one charge only".

(*Mr. Harold Willis*): The phrase in Section 21 (*a*) is "Charges for the carriage of merchandise", which may be one or may be more than one.

(*Mr. McKenna*): Undoubtedly the word "charges" is used in the plural. I should have thought that strengthened my argument, rather than my friend's, who seems to put before you the view that carriage is one unified service for which one maximum charge is to be fixed. If that is not the point in my friend's argument, what comfort does he get from Section 2 of the Act, or from Section 20, Subsection (1)?

Section 2 of the 1947 Act treats the carriage of goods as one of the functions of the Commission. Section 20, Subsection (1) of the 1953 Act says that the carriage of goods is a matter in respect of which charge may be determined under a Scheme. In my submission, unless my friend satisfies you that those two provisions have got the effect of Parliament determining that the carriage of goods shall be deemed to be one single indivisible service, they do not help his argument when he comes to Section 20, Subsection (2), and has to meet the requirement that the scheme shall fix maximum charges in the plural for the services to which the scheme relates.

(*President*): You have to remember that those words are words of general application. The whole of Section 20, Subsection (2) covers all the kinds of Schemes which have at some time or other to be considered.

(*Mr. McKenna*): I do not attach importance to the use of the plural for that reason, but I do urge that my friend's argument really means nothing unless it means that the effect of Section 2 of the 1947 Act and Section 20, subsection (1) of the 1953 Act is to require you to deem that all the services which are combined in the words "carriage of goods" shall henceforth be deemed to be one service for which one maximum charge is appropriate.

I ask you to say that that is putting much too much on either the 1947 Act or Section 20, subsection (1) of the 1953 Act. When Parliament says, at the beginning of the 1947 Act, that the Railway Commission shall be empowered to carry goods, it means by that that every service which is

involved in the carriage of goods is to be within the power of the Commission. For the moment it means nothing more, and when Section 20, subsection (1) says that the charges for which a scheme may provide are charges for the carriage of goods, again that means nothing more than that every service which is included in the general words "carriage of goods" is a service for which a maximum charge may be determined by a Charges Scheme. You get no help whatsoever out of Section 20, subsection (1) when you come up against the question which the second subsection raises, namely, when the section tells you that you are to fix maximum charges for the services to which the scheme relates, whether you are entitled to group together the separate services which are included in the word "carriage" both in the section which gives the Transport Commission power to carry goods and in the section which defines the kind of charges which may be dealt in with a general scheme. That is what I am attempting to say in answer to my friend's argument on the first point.

On the second point he challenges me first on law and then on fact. He says, in respect of law, there is nothing in the Act which says that the same maximum shall be fixed for the same service. I answer that by saying it is inherent in the power to fix a maximum charge for a service, that you have the power to fix one charge for that service and one charge only. You must fix the highest sum which it is in future to be permissible to charge for that service. The use of the word "maximum" rules out the possibility of your having power to say it shall now be £1, some other time 10s. 0d., as a maximum. Your power is to fix one maximum charge for the matter to which it relates. You have not got the power to fix two.

(*President*): You mean a maximum charge, not for one service, but for one kind of service?

(*Mr. McKenna*): For the moment I was not concerned with splitting your power to fix the maximum charges for three combined services.

(*President*): Let us forget the combination. You may have the same kind of service carrying goods 100 miles downhill and carrying goods 100 miles uphill.

(*Mr. McKenna*): That is a fact.

(*President*): You say it is legitimate to group together, as governed by the same rule, those two services which are of the same kind, exactly the same kind, although their consequences are quite different?

(*Mr. McKenna*): Certainly I should not be content that you have to have a maximum charge for carriage related to the gradient of the line.

(*President*): That is a limited concession rather.

(*Mr. McKenna*): I hope it covers the point you were putting.

What I am saying is that if you do concede—and my friend's argument gave you no reason for not accepting—that there must be the same maximum charge for the same service, if you accept that, as I say, that is put upon you by the use of the word "maximum" then all one has left of my friend's argument is that as a matter of fact the kind of services for which the maximum charge has been provided in private sidings cases may be shown to be different from the kind of services rendered to terminal station traffic.

My friend said, dealing with the matter of fact, that it was a mistaken assumption for me to make that the cost of conveying goods from private sidings was necessarily the same as the cost of conveying them from the terminal station. I do not argue that it is necessarily the same in every case, though the little one knows of the history of railway charges makes one think there is probably no real difference between the conveyance operation conducted from the private siding and conveyance operation conducted from the station. But I do not need to argue, when I am concerned to show that this scheme fixes different maximum charges for the same service, that conveyance is always as costly from the private siding as it is from the terminal station; it is enough for the purpose of my argument to show that in any case where it is not more costly to transport the goods from the private siding, then paragraph 5 means that the private sidings trader will pay more for that same service of conveyance than the station terminal and the station trader, and for this reason: Take the case where it is not more costly. Paragraph 5 covers that case as well as all others. In that case, then, there is one common element between the two traders, namely conveyance. That is done for both of them. But for the station traffic trader there are done a number of other services as well as the common service.

In that case, does it not necessarily follow that the station trader is being charged less for the element of conveyance than the private siding trader who *ex hypothesi* is having conveyance of the same kind performed for him. I say in that case, wherever it arises, the effect of paragraph 5 will be that conveyance will be charged at a higher rate to the private siding trader, than it will be to the other by reason of the circumstance that the conveyance is common to them both and other services are being performed for the same charge in the case of the station traffic. That is how I attempt to answer my friend's two points.

(*President*): Is this what you are saying: conveyance, in the strict sense, is a service; conveyance is one of the services to which this scheme relates, and, therefore, because it is one of the services, a maximum rate must be fixed for conveyance?

(*Mr. McKenna*): I certainly say that on my first point, but when I come to the second argument I take there the point: I assume if you like you can combine the three together, and I try to show that for the element which is common between the two you are in effect fixing a higher charge in the case of the private siding trader than the others. If I am right in saying that the section allows you to fix maximum charges but does not allow you to fix different maximum charges for the same service, then paragraph 5 is offending against that principle in the case where the conveyance is not to be distinguished on the ground that it is more costly in the case of private siding.

(*President*): You arrive at the argument that the maxima is being fixed for the two different sets of operations by process of deduction, do you not?

(*Mr. McKenna*): Yes.

(*President*): What you are saying is that the conveyance element in the two charges is not being computed in the same way?

(*Mr. McKenna*): Yes, and whatever else is common to the two. In my case, in other words, a maximum charge has been fixed for service A, B and C; in the other case it has been fixed for A, B, C, D and E. It is the same sum of money and the fact that it is to cover A, B, C, D and E shows in effect that A, B and C are being charged to him at some lower figure than they are charged to me. In other words, the maximum for him in respect of A, B and C is lower than it is for me.

(*President*): Because of the conveyance difference?

(*Mr. McKenna*): Because other services are being performed for him in addition to conveyance. That means, in effect, two different maximum charges are being made for the element of conveyance, a lower one in his case and a higher one in mine.

(*President*): Then both heads of your argument depend on the acceptance of the view that conveyance is a separate service, or can be identified as such?

(*Mr. McKenna*): I am not sure that is so. If I am right in saying that you cannot charge different maxima, is not that principle infringed if you combine three services in one case and fix the same maximum charges for the combined three services as you fix in the other case for the one service? Are there not two possible objections to that: one that in his case you are grouping three and that is something you cannot do; but also the point that the maximum which has been charged from the single service that has been rendered to me is a different maximum than is being charged for that component part of his joint subject of charge?

(*President*): I know; but the difficulty in that is the component part of the service. The charge is for the whole operation, is it not? You say that the effect of fixing a charge for the whole operation will mean that, as between A and B, A is paying more for part of the operation than B.

(*Mr. McKenna*): If you like, Sir, yes. But however one puts it (I find letters the easiest way to understand it), if you fix the maximum charge for A plus B in his case at £1 and you fix the maximum charge for A, in my case at £1, you are in effect fixing different maximum charges in respect of the element A.

(*President*): And/or B.

(*Mr. McKenna*): No. I do not think that is so. On the illustration I have given, that may be the only way in which B is dealt with, by being made part of his combined charge of A plus B. If there is somebody else charged for the single operation B what he is charged for A plus B, then that person will have the same objection as I, to whom only service A has been rendered. Whichever way you put it, in my submission it is inescapable. In a great number of cases covered by Paragraph 5 the private siding trader will be subject to a higher maximum for those services which are tendered to him in common with the trader from the station, and that cannot be justified by its being said that there may be some cases where it is not so because the operation of conveyance in those cases may be more expensive for the private sidings traders than the others. That is all I have to say, Sir.

(*Mr. Raeburn*): I would like, Sir, to follow my learned friend Mr. Willis just a little way into the undergrowth of the statutory jungle. He referred to Section 76 of the 1947 Act, and pointed out there that that is the basis of the statutory duty to present schemes. That is so, but Section 76 is what I might call the building up section as opposed to Section 77 as modified by Section 20 of the 1953 Act, which is a breaking down section in this sense.

Section 76 accumulates the various elements which have to come under a scheme. The other sections which I have mentioned did integrate those elements for the purpose of showing how they have to be dealt with in the Scheme. Today we are only concerned with the disintegration so far as the duty to fix maximum charges is concerned, and it is for that reason that I make the distinction between the comprehensive nature of charges as referred to in Section 76 of the 1947 Act, and the discriminatory maximum charges as referred to in Section 20 of the 1953 Act.

If one looks at subsection (2), Section 21, once more (and perhaps for the last time today) it reads again: "Every charges scheme shall," then you come to these words: "as respects the services and facilities to which it relates, comply with the following requirements, that is to say . . ." Following the argument of my learned friend Mr. Willis the charges are charges and if you talk about services and facilities they are merely cumulative. That subsection should read "Every charges scheme shall comply with the following requirements." The words "as respects the services and facilities to which it relates" would be quite irrelevant and have no meaning at all because it would follow as a matter of course that the charges scheme is now, we know from Section 76, a scheme which does relate to services and facilities as Mr. Willis says, regarded from the point of view of that building up section, is cumulative. It is for that reason that we venture to submit that when it comes to the mandatory provision "shall fix maximum charges" that provision relates specifically as respects services and facilities, and looked at separately, because the subsection (2) (*b*) goes on to say "except in cases where it appears not to be reasonably practicable or to be undesirable so to do," thereby showing that it is regarding the duty to fix maximum charges as a duty which relates to particular cases and not a duty to fix maximum charges in relation to everything which must be covered by the Scheme. For that reason one has to look at the subdivisions of charges. Mr. McKenna has suggested a subdivision into three different kinds of services, and I am not dissenting from that if it commends itself to the Tribunal as an alternative.

(*President*): I do not think, Mr. Raeburn, Mr. McKenna suggested that his trichotomy exhausted the services and facilities.

(*Mr. Raeburn*): No, but there are three umbrellas under which all services and facilities come, subject to which umbrella they come under.

(*President*): I did not understand him to say that. He said there are three kinds of operations, comprised in Paragraph 5. He did not say those exhausted the things which a Railway Company does.

(*Mr. Raeburn*): I accept there are certain things which it is not reasonably practicable or it is undesirable to bring under those headings, and I adopt it too.

But leaving out, for the moment, those particular things, or using them merely as illustrations of the necessity to discriminate, I am drawing attention once more to the distinction between services and facilities, which is only underlined by looking back at Section 2 of the 1947 Act, where a great deal of light is thrown upon what are regarded as services and what are regarded as facilities, but Mr. Willis has already referred to it in detail, and so far as it has gone, in my submission it has assisted my argument. What I am saying is: I appreciate the force of the criticisms which have been levelled at my argument as it would work out in practice, namely that taking facilities, if a variety were to be grouped together under what I call the same umbrella, they might in a modified way be open to the same kind of objection, namely that one person wants all the facilities and one person only wants some of the facilities. If there is a maximum fixed for facilities generally it is perfectly true that in a sense I might find myself in the same difficulty. I am not arguing merits. When we come to arguing merits it may very well be that any such grouping would be open to objection and doubtless if the objection were upheld would be corrected by the Tribunal.

But I am arguing *vires* and I submit that as a matter of *vires* the Commission have no power to group together services and facilities under the same umbrella and fix a comprehensive maximum to cover all of them. Whether the line was drawn happily by Parliament or unhappily by Parliament, it is not for us to say. Fortunately Parliament has left it to this Tribunal to determine in detail on the merits how these matters are grouped, once they are grouped as Parliament has directed they should be grouped. But my argument is simply this, that Parliament has required that there shall be a discrimination as regards not charges but the fixing of maximum charges as between services and facilities, and it is for that reason that I make this submission on behalf of our clients.

(*Mr. Blain*): I have nothing further to add, Sir, that I feel would be of any further assistance to the Tribunal.

(*President*): We will consider, of course, everything which is put before us. I would suggest *de line esse* that we pass to the second item on the Agenda, which was to determine the procedure we should follow at subsequent sittings. We know that the main objection is that there should not be any subsequent sittings. What we had in mind in putting down No. 2 was that it was desirable that some method should be found whereby when the Scheme was discussed on its merits we should not be discussing all its demerits at the same time, and the suggestion I want you to consider is this: namely, that after Mr. Willis has opened the case for the Commission, as no doubt he wishes to do generally, there should by agreement by all the Objectors be selected a topic and that that should be the subject matter of the evidence and cross-examination, rather than that the whole field should be open and that either policy or financial witnesses should be cross-examined on every possible point that can arise on every possible clause.

(*Mr. Harold Willis*): Might I just make one or two observations on that matter, Sir. As we understand how this matter will be probably developed is this: I shall make an opening statement covering the broad justification for the approach underlying the Scheme, and also in connection with the figures put into the Scheme of maximum charges; I thought, Sir, that it would not be very easy to disentangle any particular bit of that for the purposes of the evidence. The evidence which we should be calling in support of the Scheme would of course cover the justification for the broad conception underlining the scheme, and it would also seek to prove the figures which we have put in. Up to that point, Sir, I do not myself see that there is any particular element of the case which could readily be detached and dealt with separately.

There are, of course, plenty of matters which could be the subject matter of separate consideration. I have in mind, for instance, terms and conditions and matters of that kind. They plainly could be dealt with separately.

(*President*): There are some matters which of course are plainly clauses points, but without trying to adopt anything exactly like the procedure in Parliament I should have thought, Mr. Willis, that it was possible to separate some main issues, and that it saves a certain number of people a large amount of time.

(*Mr. Harold Willis*): You see, as I envisage the way this would develop, it would be that after an opening speech from me we shall call our evidence in chief, as I apprehend you would wish, and that after the evidence in chief has been given there should be an interval of, say, three weeks or a month during which the opponents could be allowed to consider the evidence and the figures given in the evidence before they are required to cross-examine. It might be that at the stage, after that evidence has been called, then the matter could be considered in the light of the evidence. From what I apprehend the evidence is likely to be, I do not at the moment see that it is going to be easy to detach bits of it. That is certainly a matter which we would consider very carefully at the time, but I think it would be easier, if I might suggest it, to defer any decision on that point until we had had an opportunity of putting a broad case before the Tribunal. I think any bits that can be segregated can be much more readily segregated at that time.

(*President*): You know more about your case than I do at the moment. Your view is against the practicability of the suggestion I had in mind?

(*Mr. Harold Willis*): I think so, Sir, and I doubt really whether it would be to the convenience of the Tribunal or of the Objectors or would save time.

(*President*): What have you to say, Mr. Raeburn?

(*Mr. Raeburn*): I find myself in agreement with Mr. Willis, very largely on the same grounds as those which you yourself stated, namely, that he knows his case and I do not. If he says that he cannot conveniently divide it into particular topics, I can see no way in which I can suggest it could be divided, of course, apart from the purely clauses issues.

(*President*): Can you see any way in which you can conveniently divide your case?

(*Mr. Raeburn*): I find it difficult until I have heard Mr. Willis's case to know just how I can reserve cross-examination on some points and so forth. There is one matter which has been very much in our minds which should, I think, shorten the proceedings, and that is this: maximum charges are presumably based on some form of costing, and it is only right in our submission that at this stage we should have disclosed to us the figures on which they are based so that we have time to consider them.

(*President*): That is what Mr. Willis was conceding, namely that after the evidence in chief had been given there should be a sufficient adjournment to enable the Objectors to consider the evidence.

(*Mr. Raeburn*): The only difference between us is that Mr. Willis suggests we wait until the evidence in chief has been given and then take our time to consider it, whereas our respectful view is that it would be very much more economical from the point of view of all concerned if we could see the figures and therefore be in a position to know and understand the evidence as it is given instead of waiting until the evidence has been given in order to consider what our position may be.

(*President*): I think that would be imposing a rather unusual kind of burden on the promoter, would it not?

(*Mr. Raeburn*): I can only say it is the kind of burden which is imposed on every litigant at Common Law and, so far as I know, in Chancery too, under the process of discovery.

(*President*): But does a surveyor hand over particulars to his opponents?

(*Mr. Raeburn*): That is not what I was asking for. What I was asking was to see the breakdown of the figures on which the maximum is based, not the opinion of his witnesses. I was not suggesting we should see the proofs of the witnesses. We feel that we are very much hampered and are working very much in the dark when we criticise these maxima without really knowing whether they have what we consider to be a reasonable basis, or indeed what the basis of them is at all.

(*President*): You will not be asked to consider them in the dark. If three weeks is not long enough to bring light, you can ask for more than three weeks.

(*Mr. Raeburn*): I am not objecting to the time we shall have after the evidence has been given, but there is a great deal of difference listening to evidence knowing what your *prima facie* criticisms are—that is the point of discovery in litigation after all, so that you know what the documents are which support the case—and on the other hand having to hear for the first time what is coming out and then having to think it over afterwards. It does seem to me it would save a good deal of time if we could know those figures now.

(*President*): I am not going to make any order to that effect. Have you anything to say, Mr. McKenna?

(*Mr. McKenna*): I had thought that when Mr. Willis has called his evidence it would be possible to work out some way of breaking the thing up; not mathematically perfectly, but something which would enable some people to stay away for a few days and come back later.

(*President*): You are all agreeing with Mr. Willis, I think. Very well; we will consider the suggestion as not having been made. Are there any other matters?

(*Mr. Harold Willis*): On the question of *locus*, do you wish to decide that? There may be some people whose *locus* is in question.

(*Mr. McKenna*): Would you deal with the dates before you deal with the *locus*, Sir?

(*President*): When do you want to sit, Mr. Willis?

(*Mr. Harold Willis*): The suggestion we put before the Tribunal is that we should be ready to start our case about the 4th October. I understand that is convenient to my opponents.

(*President*): Very well. Then it will be not before 4th October.

(*Mr. Harold Willis*): Looking through the list of Objectors, there appears to be certainly a question as to the *locus* of No. 11, the Globe Tank and Foundry, Wolverhampton, Ltd., a question as to the *locus* of National Galvanisers Ltd., No. 14, and a question as to No. 3, the National Association of Sack Merchants Reclaimers, Ltd. I am instructed that with regard to No. 3 we are satisfied about that.

(*President*): How have you been satisfied?

(*Mr. Harold Willis*): We are not objecting. The objection was merely that they did not state whom they represented, but I understand we need not bother further about that. The Chamber of Shipping are in a position, I should have thought, of some little doubt because under the Act you will recall they have certain rights given to them to make representations, but I do not want to anticipate the argument on this because I understand Mr. Horner is appearing for them and it may be he would desire to substantiate his *locus* on some other ground. *Prima facie* I would have thought he might be in some little difficulty.

(*President*): If they are not going to call evidence we would be disposed to allow them to address us, but not to cross-examine.

(*Mr. Harold Willis*): Of course, we would have no objection to that at all. It was clearly a question of whether they were seeking to bring themselves within some section of the Act.

(*President*): Mr. Horner, were you thinking of calling evidence?

(*Mr. Horner*): No, Sir. May I say at once that our main concern was that the representations which we have already lodged should have the cognisance of this Tribunal. Our apprehension was that if it were contended that we had no standing before the Tribunal even our little submissions could not be taken into account.

(*President*): No; that is not so.

(*Mr. Horner*): We shall be quite content then. We were not intending to call evidence unless at a later stage, in the light of our submissions, the Tribunal felt that there was some point on which the Chamber could be of assistance to the Tribunal.

(*President*): We have power to do that of our own accord. We need not discuss your *locus* unless you claim the right to cross-examine witnesses. If you are prepared to limit your right to making an oral statement, then you will be given the right and you need not bother about your legal status.

(*Mr. Horner*): I can say at once that my clients are prepared to limit themselves in that way.

(*President*): What is the next one?

(*Mr. Crawford*): I represent the National Galvanisers Ltd. As far as my clients are concerned they do not intend to call any evidence. Should their *locus* be upheld I would be prepared to ask you, if it were acceptable to my friend Mr. Willis and the Tribunal, that we be allowed to limit ourselves to a representation which I gather the Tribunal has power to authorise under the Rules.

(*President*): I have always understood so; that is the practice we adopt. You say you do not desire to cross-examine, you merely wish to address us on some future date. Then we need not discuss your *locus*.

(*Mr. Crawford*): That is my position. My clients' interests will be well served in that way.

(*Mr. Harold Willis*): I entirely agree.

(*President*): Is there anybody else?

(*Mr. Harold Willis*): No. 11, Sir, Globe Tank and Foundry, Wolverhampton, Ltd. They indicated they did not wish to pursue any legal objections.

(*President*): They are not here, are they?

(*Mr. Lidguard*): I am here speaking for them, Sir, and I rather understood that as they are not an Association, they are only a private firm, they would not have any standing here at all.

(*President*): So Mr. Willis says. You understood what I said, namely that if you wished only to address us at some stage, we need not trouble to discuss your *locus* because we should give you leave to do that. You will not have an opportunity of cross-examining, but otherwise at some stage you will be able to make an address.

(*Mr. Lidguard*): Thank you, Sir.

(*Mr. Harold Willis*): That disposes of them all, Sir.

(*President*): It is quite unnecessary to discuss these abstract people.

(*Mr. Harold Willis*): Entirely unnecessary, Sir.

(*President*): Very well. That is all we can do today. We will consider the *ultra vires* submissions and put something into writing about that.

(*Adjourned.*)

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